LIBRARY

BOSTON
UNIVERSITY

COLLEGE
of
BUSINESS
ADMINISTRATION

Class No. * 331
Book No. I61
Acc. No. 24833
Date 8-21-36

BOSTON UNIVERSITY

College of Business Administration

THESIS

THE NATIONAL LABOR RELATIONS ACT

OR

THE EFFECTS OF THE WAGNER ACT

To the Date of February 20, 1936

by

William Stanley Italiano

(B.S. in B.A. Certificate, 1935)
(Boston University)

submitted in partial fulfilment of
the requirements for the degree of
Master of Commercial Science

1936

Digitized by the Internet Archive
in 2016

https://archive.org/details/nationallaborrel00ital

8-21-36
14833
*331
I+1

The author wishes to express his appreciation of the helpful criticism and guidance received from his thesis advisor, Dr. McPherrin H. Donaldson.

TABLE OF CONTENTS

Chapter		Page
**	Introduction - -	1
I	HISTORY OF THE WAGNER BILL:	3
	Purpose of the Chapter - -	3
	Bill of March 1, 1934 - -	3
	Purpose of bill - -	3
	Brief Analysis of Bill:	
	Title I - -	3
	Title II	5
	Title III	6
	Substitute Bill for Bill of March 1:	7
	Purpose of bill - -	7
	Brief Analysis of Substitute Bill:	
	Policy - -	7
	Definitions - -	8
	Unfair Labor Practices -	8
	National Adjustment Board -	8
	Prevention of Unfair Labor Practices - -	9
	Voluntary arbitration -	9
	Representation of employees	10
	Investigatory powers -	10
	Reports - -	10
	Limitations - -	10
	What Substitute Bill Did Not Do:	11
	Fix wages - -	11
	Regulate rates of pay -	11
	Limit hours of work -	11
	Govern sanitary or similar working conditions -	11
	Prevent employee-organization	11
	Prevent disputes from being settled locally -	12
	Attempt to settle labor grievances - -	12
	Powers of the Board were restricted - -	12.
	Public or Joint Resolution No. 44 -	13
	Purpose - -	13
	Approval and expiration dates -	14

chapter page

II THE WAGNER ACT: 14

Purpose of chapter - - 14

Bill of February 21, 1935 - - 14

The National Labor Relations Act - 14

Purpose and Objectives: - 14
Industrial Peace - 14
Economic Adjustment - 14

Weaknesses of Preceding Laws: 16

National Industrial Recovery Act:
Ambiguity - - 17
Excessive generality - 17
Excessive diffusion of administrative responsibilities 18

Public Resolution No. 44:
No power vested in the Board - 18
Obstacles to elections - - 18

Analysis of the Wagner Act:

Findings and Policy - - 18
Five assumptions of the Act:
Denial of the rights of employees by employers - 19
Inequality of bargaining power between both groups 19
Better working conditions through bargaining - 19
Advantages of employers over employees - - 19
Collectivist Era - - 20

Definitions of Terms: 22

Employer - - 22
Person - - 22
Employee - - 22
Representatives - - 23
Labor organizations - - 23
Commerce - - 23
Affecting Commerce - - 23
Labor Dispute - - 23

chapter page

II (continued)

Rights of Employees--Unfair Labor Practices:

No interference by employer - 25
Employer-dominated unions - 26
Employer-discrimination - 27
Employer dismissals of employees -28
Collective bargaining - 28

Representatives and Elections 30

Effect on employers - 34
Effect on employees - 34

National Labor Relations Board - 35

History - - 35
Organization - - 36
Jurisdiction - - 41
Procedure - - 43
Investigatory Powers - 45
Limitations - - 46

Conclusions - - 46

III HEARINGS ON THE WAGNER ACT BEFORE THE COMMITTEE ON EDUCATION AND LABOR:

Purpose of the chapter- - 49

Statements in support of the Act:

Dean Lloyd K. Garrison - 51
Professor H. A. Millis - 54
Harold Shapiro - - 55
John L. Lewis - - 56
Wood F. Axton - - 57
Dr. Sidney E. Goldstein - 60
Joseph Madden - - 61
Senator Robert F. Wagner - 62

Statements in opposition to the Act:

W. Gibson Carey - - 63
Eugene McAuliffe - - 65
E. R. Lederer - - 67
C. A. Higgens - - 68
Letter to Senator Walsh - 69
Axtell J. Byles - - 70

chapter page

III (continued)

Conclusions:

From the standpoint of employers 72
From the standpoint of employees 72
From the standpoint of society -73

IV-----HISTORICAL PRECEDENTS AND CONSTITUTIONAL ISSUES OF THE WAGNER ACT:

Purpose of the chapter - - 75

Historical precedents: - - 76

Section 2 of the Railroad Labor Act of 1926 - - 76

Section 2 of the Norris-La-Guardia Anti-Injunction Act of 1932 - - 78

Section 77 of the Bankruptcy Act of March 3, 1933 - - 79

Section 7(e) of the Act which established a federal coordinator of transportation - 80

Section 7(a) of the National Industrial Recovery Act - 81

Constitutional Issues of the Act: 82

Due Process of Law: 82
Meaning - - 82
Regarding unfair labor practices - - 82
Regarding the majority rule 89
Regarding judicial review - 92

Interstate Commerce - - 92
Unwarranted Delegation of Powers 96

Constitutionality tested in federal court - - 101
Majestic Flour Mill Case 101

Conclusion - - - 107

chapter		page
V------THE EFFECTS OF THE WAGNER ACT:		108
	Activities of the Labor Board -	108
	Pittsburgh-Greyhound Case -	111
	Effects On The Employers - -	115
	Effects On The Employees - -	124
	Effects on Labor Organization -	127
	Effect of Collective Bargaining -	130
	The Psychological effect regarding the Constitutionality of the Act	132
	Conclusion - - -	133
VI-----SUMMARY AND CONCLUSION; * *		135-140
APPENDIX:		
	Chapter References - -	AA(i-ix)
	A Copy of the National Labor Relations Act - -	BB
	A Copy of the National Industrial Recovery Act - -	CC
	A Copy of Questionnaire Sent Out	DD
	The Names of Those to Whom the Questionnaire DD was sent -	EE(i-viii)
	General Sources of Information -	FF(i-ii)

I N T R O D U C T I O N

As the title implies, this thesis deals with the Wagner Act---------a New Deal Labor Law.

Within the last few months, the Supreme Court of the United States has dealt disastrously with the Roosevelt Administration and Its plans. We have seen the National Industrial Recovery Act and the Agricultural Adjustment Act ruled unconstitutional. With such precedents, like decisions on other New Deal legislation will undoubtedly follow.

In this report, we are not concerned with the issue of justifying one of the two sides; that is, the New Deal legislation or the Constitution. We are concerned, however, with an act, the National Labor Relations Act commonly known as the Wagner Act, which endeavors, by means of government intervention, to better employer-employee relationship.

Labor relationship has been a problem since time immemorial; there has always been a conflict between both groups and it seems that as long as we hold to our present system, conflict between both groups is inevitable. If such a premise is true, labor leaders (including the Government) should not attempt to end such conflict for they often in-

crease the friction; but rather, labor leaders should concern themselves with the problem of lessening the degree and causes of conflict between both groups.

The Wagner Act is an attempt on the part of the Government to do that very thing. It has its advantages and its disadvantages; it certainly has its "Wagnerites" and its enemies. The future of the Act is uncertain. Therefore, the best that this thesis can do is to set forth the theory of the Act, the constitutional basis of the Act and the effects of the Act, immediate and ultimate, on the employers, employees, labor organizations and the public.

W. S. I.

February 20, 1936

CHAPTER I

HISTORY OF THE WAGNER ACT

No thesis would seem complete if it were lacking in a review, brief as it may be, of how the topic has developed. Consequently, the purpose of this chapter is to give a brief review of the proper background belonging to the Wagner Bill, for although the Act was made law July 5, 1935, it is really a result of preceding laws which were faulty in method and procedure. It is well, then, to note exactly how the Wagner Bill has evolved.

On March 1, 1934, the original Wagner Bill, known as "Senate 2926" was introduced in the Senate by Senator Robert F. Wagner. The purpose of the Bill was "to equalize the bargaining power of employers and employees, to encourage the amicable settlement of disputes between employers and employees, to create a National Labor Board, and for other purposes." (1) The original bill was presented in three parts.

"Title I" cites the name of the Act as the "Labor Disputes Act" and gives an explanation of why the Act is very important. "The tendency of modern economic life toward integration and centralized control has long since destroyed the balance of bargaining power

between the individual employer and the individual employee, and has rendered the individual, unorganized worker helpless to exercise actual liberty of contract, to secure a just reward for his services, and to preserve a decent standard of living, with a consequent detriment to the general welfare and the free flow of commerce. Inadequate recognition of the right of employees to bargain collectively through representatives of their own choosing has been one of the causes of strikes, lockouts, and similar manifestations of economic strife, obstructing commerce and imperiling the general welfare. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of commerce, to encourage the establishment of uniform labor standards, and to provide for the general welfare, by removing the obstacles which prevent the organization of labor for the purpose of cooperative action in maintaining its standards of living, by encouraging the equalization of the bargaining power of employers and employees, and by providing agencies for the peaceful settlement of disputes." (2)

Section 3 of Title I defines the terms. (3)

The unfair labor practices are listed in Section 5 of Title I. Briefly, the provisions state that it was unfair labor practice for an employer------

1/ to attempt to impair the right of employees to organize and join labor organizations, and to engage in concerted activities for the purposes of organizing and bargaining collectively through representatives of their own choosing or for other purposes of mutual aid or protection.

2/ to refuse to recognize, deal with representatives of his employees, and to fail to exert every reasonable effort to make and maintain agreements with such representatives.

3/ to participate or influence in the formation of any labor organization.

4/ to contribute financial or other material support to any labor organization.

5/ to engage in any discriminatory practice which encourages membership or non-membership in any labor organization.

"Title II" of the original bill established a National Labor Board and stipulated the powers of the Board. The Board was to consist of seven members appointed by the President with the advice and consent of the Senate. Two of the members were to represent the employers; two to represent the employees and three as representatives of the general public. Members

representing the general public were to be paid ten thousand dollars each year for a term of five years. The others were to be paid twenty-five dollars per day when attending meetings of the Board, and were to be chosen for a period of one year. The principal office of the Board was to be in the District of Columbia and the Board could, "either by itself or through its agents, offer its services to the parties to any labor dispute as conciliator or mediator in such disputes, and act as conciliator for the parties who accept such offer". (4) The Board was to be empowered to prevent any person from engaging in any unfair labor practice that burdens or affects commerce or obstructs the free flow of commerce or tends to lead to such results. Also, when any parties to a labor dispute agreed to submit to the arbitration of the Board and the latter accepted such submission, any agreement was "valid, irrevocable, and enforceable."

Under "Title III" of the original bill, it was the intent of Senator Wagner to create in the Department of Labor a United States Conciliation Service, under the direction of a Director of Conciliation who was to be appointed by the Secretary of Labor. The purpose of this appointment was to offer its services to the parties of any labor dispute and to attempt to

adjust such disputes by conciliation and mediation or by arranging for voluntary arbitration.

While the hearings on the original bill were in progress, Senator Wagner introduced a substitute bill. After extensive hearings on the substituted bill, the Committee on Education and Labor rewrote the bill retaining the essential principles and making some changes that were not of material consequence. The bill is known on record as Substitute Bill of May 26, 1934, No. 1260 of the Seventy-third Congress, second session. The purpose of the substituted bill was "to equalize the bargaining power of employers and employees, to promote the amicable settlement of disputes between the employers and employees, to create a National Labor Board and for other purposes". (5) In purpose, the substituted bill differs from the original bill of March 1, 1934 by the substitution of one word; the original bill read "to encourage the amicable settlement of disputes, etc." while the substituted bill read "to promote the amicable settlement of disputes." Section 1 of the Act declared it "to be the policy of the United States to remove unnecessary obstructions to the free flow of commerce, to encourage the establishment of uniform labor standards, and to provide

for the general welfare, by establishing agencies for the peaceful settlement of labor disputes". (6)

The definitions of terms as used in the Act are given in Section 2. (7)

Under the Substitute Bill, it was to be unfair labor practice---------

1/ for an employer to attempt to impair the right of employees to form or join a labor organization of their own choosing.

2/ for employees to attempt to impair the right of employers to form or join employer-organizations of their own choosing.

3/ for an employer to interfere with or dominate the administration of any labor organization.

4/ for an employer, by discrimination in regard to employment or terms of employment, to encourage or discourage membership in any labor organization;

The substituted bill created in the Department of Labor a Board known as the "National Industrial Adjustment Board" composed of five members appointed by the President with the consent of the Senate. Three of the members were to represent the general public with one of them acting as chairman of the Board. Each

of the three members was to receive a salary of ten thousand dollars a year. Furthermore, the President was to appoint for terms of one year, six individuals to represent the employees and six to represent employers; these twelve persons would usually be chosen from organized representatives of employees and employers. The chairman of the Board could select two individuals from such representation; one for employers and one for emplcyees thus completing the Board of five members. The two individuals selected were to be paid twenty dollars a day when engaged in the performance of their duties.

In order to prevent any unfair labor practices, the Board was empowered to prevent any person from engaging in any of the practices that has led or threatens to lead to a labor dispute that might affect commerce or obstruct the free flow of commerce. If anyone failed or neglected to obey the orders of the Board, "the Board may petition any circuit court of appeals of the United States for the enforcement of such orders". (8) The Board was also empowered to act as arbitrator in labor disputes when parties agreed to submit to such arbitration. Any such voluntary agreement became "valid, irrevocable and enforceable

save upon such grounds as exist at law or in equity for the revocation of any contract".(9)

If any dispute arose as to who were the representatives of the employees, the Board had the power under the act to investigate such disputes and certify to the conflicting parties the individual or labor organization that would represent the employees

In order to accomplish its purposes better, the Board had certain investigatory powers. For example, any member of the Board could require by subpena the attendance and testimony of witnesses; a member could require documentary evidence relating to any matter under a complaint; any and all of such agents or witnesses were to be reimbursed for all expenses. The Board could further require from any department or agencies of the Government any information they may have for the better fulfillment of the Board's purposes.

Under the Substitute Bill, reports were to be presented to Congress at the end of each fiscal year stating in detail the cases it had heard, the decisions it had rendered, the names, salaries and duties of all employers and officers in the employ, and an account of all the money it had reimbursed.

The limitations of the Board were that the employee

could not be required "to render labor or service without his consent, to authorize the issuance of any order or injunction requiring such service, or to make illegal the failure or refusal of any employee individually, or any number of employees collectively, to render labor or service." (10)

Although the Substitute Bill was an improvement over the original bill, it failed, nevertheless, to do or try to do certain things. Nothing in the bill allowed the Board or its agencies to fix or to regulate rates of pay, to limit the hours of work, to affect or govern sanitary or similar working conditions in a place of employment.

The bill did not relate to employment of a domestic servant, or an agricultural laborer; in fact, it did not relate to any establishment employing less than tne persons.

Nothing in the bill required an employee to join any form of labor organization; and if employees chose to organize, nothing in the bill prevented them from so doing in whatever system or form they desired.

If the employees chose to belong to any organization, there was nothing in the bill compelling an employer to enter into agreements with the organization.

The bill did not prevent grievances or disputes from being settled locally; in fact, it fostered such settlements since the Board was explicitly not going to settle all labor grievances.

Finally, the bill did not provide unusual powers to the Board; the Board was restricted to only four unfair labor practices; "every power granted to the Board with respect to the taking of testimony, summoning of witnesses, and like matters, is duplicated in at least a majority, if not all, of the federal administrative tribunals such as the Federal Trade Commission, the Interstate Commerce Commission, etc."(11)

While the substituted bill was pending in the Senate, Public Resolution No. 44 was enacted into law. Dealing with the right of employees to organize and bargain collectively was Section 7(a) of the National Industrial Recovery Act; thus dealing with the same subject as the Wagner Bill. However, the language of Section 7(a) was considered so ambiguous that it misled both employees and employers as to their rights under the law. As a result of the ambiguity of Section 7(a), Public or Joint Resolution No. 44 was passed by the Senate as a temporary compromise "to effectuate further the policy of the National Industrial Recovery Act".(13) Briefly, Joint Resolution No. 44 gave the President

authority to create a temporary board, directed to investigate issues, facts, practices or activities of employees or employers in any controversies arising under Section 7(a) of the National Industrial Recovery Act. This law was, in fact, a temporary measure to "insure the right of employees to organize and to select their representatives for the purpose of collective bargaining as defined in Section 7(a)".(14)

Public Resolution No. 44 was made law June 19, 1934 and expired June 16, 1935 "or sooner". The question may be asked "Why wasn't the law merely extended?" The answer is found in the power of the Board as created by the Resolution. This temporary measure made practically no contribution at all toward supplying to the Board the power that was lacking. Consequently, before the expiration of the law, the Wagner Act was again introduced in the Senate February 21, 1935 and was made law July 5, 1935.

CHAPTER II

THE NATIONAL LABOR RELATIONS ACT

(Commonly known as the Wagner Act)

While the preceding chapter deals entirely with the historical survey of the Wagner Act, this chapter deals solely with a discussion of the Act.

The present bill was introduced in the Senate February 21, 1935 and hearings before the Committee on Education and Labor were held on the Act from March through April. David I. Walsh of Massachusetts acted as Chairman of the Committee and on May 2 , submitted a report recommending the passage of the Bill. The National Labor Relations Act was enacted July 5, 1935.

In recommending the adoption of the Act, Mr. Walsh and the committee believed that "the time has come for a decision either to withdraw that promise (1) or to implement it by effective legislation..... .....In the committee's judgment, the present bill is a logical development of a philosophy and a consistent policy manifest in many acts of Congress dealing over a period of years with labor relations." (2)

There are two general objectives of the bill: (1) to promote Industrial Peace; (2) to "encourage,

by developing the procedure of collective bargaining, that equality of bargaining power which is a pre-requisite to equality of opportunity and freedom of contract", or Economic Adjustment.(3)

No one can deny the fact that industrial peace is lacking. Industrial strife is very costly. During the period from 1915 through 1921 there were on the average 3043 strikes per year, involving the vacating of 1,745,000 jobs and the loss of 50,242,000 working days every 12 months. From 1922 through 1926, the annual average totaled 1,050 strikes, 775,000 strikers, and 17,050,000 working days lost. From 1927 through 1931 the yearly average for disputes was 763, for employees leaving their work 275,000, and for days lost 5,665,000. In 1933, over 812,137 workers were drawn into strikes, and in 1934, the number rose to 1,277,344. In this two-year period, over 32,000,000 working days were lost because of labor controversies. While exactitude is impossible, reliable authority has it that over a long range of time the losses due to strikes in this country has amounted to at least $1,000,000,000 per year. And no one can count the cost in bitterness of feeling, in inefficiency, and in permanent industrial dis-

location.(4) It is not the purpose of the government or the Act to attempt to remove all the causes of labor disputes but "many of the most fertile sources of industrial discontent can be segregated into a single catagory susceptible to legislative treatment."(5) The Act attempts to remove to a large proportion the bitterest industrial outbreaks by giving definite legal status to the procedure of collective bargaining and establishing the machinery to facilitate it.

Modern Economic forces have left the individual wage earner in an isolated position. The relative position of the wage earner has been intensified by technological forces and unless better economic adjustment is attained, a feeling of discontent will grow to unknown degrees.

The National Labor Relations Act, as its history reveals, is not completely new in scope and philosophy. It really represents a reaffirmation of the principle of collective bargaining and a resolve to set up a permanent agency with full powers of enforcement. The Act recognizes the interest of the public, labor, and industry. It seeks to relieve the public of costly labor disturbances through eliminating the deep-rooted unrest brought on by employers who set their wills

against the organization of their workers. "In labor's behalf, it seeks to make it unnecessary for workers to undergo the hardships and dangers of strikes in support of a right recognized for decades by courts, by party platforms and by legislatures. The prohibition of unfair labor practices imposes no undue hardship on violators, and to industries voluntarily complying with the law, it affords protection against the sweatshop tactics of unscrupulous competitors." (6) Preceding laws have dealt with the subject of the Wagner Act but they have been weak in certain respects. The two important laws that have failed to prevent what they were designed to prevent were the National Industrial Recovery Act and Public Resolution No. 44.

The ambiguity of Section 7(a) of the National Industrial Recovery Act (7) already has been mentioned. The greater precision and certainty in the law of the Wagner bill will clearly benefit both employers and employees. Although Section 7(a) stated the principles of collective bargaining, the excessive generality hampered the administration and those who wished to obey the law. Also, under the same Section, its ad-

ministration was diffused among thirteen to fifteen independent boards who had no power to enforce their decisions. The enforcement of Section 7)a) was entrusted largely to the National Industrial Recovery Administration.

Under Public Resolution No. 44, the Board, as created by the law, had no powers and had to seek enforcement through reference to the Department of Justice. Furthermore, if the Government attempted to conduct an election, it could be contested by the employers in the courts which meant that there was a possibility to delay the Government indefinitely.

Thus, the Wagner Act is an attempt to iron out the weakness of preceding laws. It does not appear to be ambiguous and general; it is independent of other Government departments and administrative responsibility is entrusted in the hands of a few; it has a definite procedure for the election of employee-representation and enough power is vested in the Board to make possible enforcement of its decisions.(8)

In Section I of the Act under the Title of "Findings and Policy" the philosophy underlying this legislation, or the assumptions on which it is based, are set forth.

In the first place, the legislation is based on the assumption that "the denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce" in various ways.(9) Even though the assumption may be correct, it remains to be seen whether equality of bargaining power between employees and employers, articulated through a scheme of collective bargaining, will substantially lessen industrial strife."(10) I can see where collective bargaining may reduce the number of industrial clashes but it will not necessarily lessen the long-run damage flowing from industrial strife.

Secondly, it is assumed that "the inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association, substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions

by depressing wage rates and the purchasing power of wage earners in industry, and by preventing the stabilization of competitive wage rates and working conditions within and between industries."(11) The purpose is fair but it does not necessarily follow that because a few of the unionized workers can command higher wages, all unionized workers can command higher wages. "It is doubtful whether the equality of bargaining power between the employers and employees will increase the total purchasing power of employees in the form of wages." (12)

The third assumption of the Act is that collective bargaining, in regard to wages, hours, and basic conditions, will tend to increase the purchasing power of employees through higher wages, foster, protect and promote commerce between the states and lessen industrial strife. The assumption seems fundamentally sound, but as yet, we cannot conclude that what works beneficially in a given group will also work in all groups.

While the three preceding assumptions are explicit, there are two other assumptions on which the Act is based.

One is that employers enjoy a substantial advan-

tage over the individual employees in the negotiations of terms of employment, and that this advantage arises out of the organization of employers in corporate forms of ownership and out of numerous other modern industrial conditions. (13)

The other is that we are living in a collectivist era, that since capital is highly organized, labor must be encouraged to organize; and "that the possibility of returning to a regime of competition is remote, if not entirely out of the question". (14)

No one will deny that the individual worker is at a disadvantage to bargain with his employer but it also seems true that the majority of employers do not use their power to exploit their employees. That class of employers is in the minority, it seems.

On such assumptions, a philosophy which is debatable, the Wagner bill stands. On such theory, whether it be logic and justice or political expediency, Congress asserts it to be the "policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce, and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and

procedure of collective bargaining, and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." (15)

Definition of Terms:

A brief definition of terms as used in the Act will be sufficient to illustrate their significance.(16)

1. The term "employer" includes any person acting in the interest of an employer, directly or indirectly.

2. The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

3. The term " employee" includes any employee, and is not limited to the employees of a particular employer, unless the Act explicitly states otherwise, and includes any individual whose work ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who cannot obtain any other regular and substantially equivalent employment.

4. The term "representatives" includes any individuals or labor organization.

5. The term "labor organization" means any organization of any kind, or any agency or employee-representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

6. The term "commerce" means trade, traffic, commerce, transportation, or communication among the several states, any territory of the United States.

7. The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

8. The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, mainaining, changing, or seeking to arrange terms or conditions of employment regardless of whether the disputants stand in the proximate relation of employer and employee.

Rights of Employees---Unfair Labor Practice:

Section 7 of the Wagner Act declares the rights of employees. They "shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection". In reference to the rights of employees, it was argued by some representatives of employers, when the Act was being considered, that this legislation need not be enacted because labor already enjoyed such rights. In actual practice, however, it is doubtful whether labor does enjoy such rights. Prior to section 7(a) of the National Industrial Recovery Act,(17) employers, in general, did not recognize these rights while the courts paid little attention to them. Furthermore, the Government had established few remedies for their violation. "The Wagner Act now purports to make these rights dynamic by defining violations of them, and by creating legal machinery to prevent the commission of such violations". (18)

In reference to the unfair labor practices, they are strictly limited to the ones enumerated in the Act. In this respect, they are better defined and

more definite than preceding laws. The Act enumerates four uniform Labor Practices.

The first unfair labor practice has to do with the interference, restraint, or coercion of the employees by the employer; "it shall be an unfair labor practice for an employer to interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7." (19)

It is interesting to note how one author(20) interprets this first unfair labor practice. He thinks it is a comprehensive, broad prohibition upon the employer. The language of this prohibition, using three terms in ascending severity, is designed to protect workers in their rights against any employer's interference, whether mild or coercive, direct or indirect. This unfair labor practice forbids employers to interfere with the right of workers to engage in collective bargaining through their representatives. It prohibits the employer from offering inducement with a view of influencing the workmen or representatives in the exercise of their rights under the Act. The first unfair labor practice makes it impossible for an employer to close his business or change locality in order to violate the rights or escape his obligations;

he will be guilty if the Board can prove that he intentionally violated this Section of the Act. The employer is even guilty of this unfair labor practice if he gives information which is deliberate and wilful misrepresentation; he must be careful as to the kind of information he gives his employees. The Board will experience many difficulties attempting to get exact information from the employers and employees concerning a situation. It is evident that the Board is in a very delicate position and must use the greatest amount of prudence.

The second unfair labor practice deals with employer-sponsored labor organizations. It forbids an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it".(21) The purpose of this section is to cripple, and in time destroy, existing company unions and employee-representation plans and to render very difficult the organization of new ones. A strict enforcement of this section of the Act will undoubtedly accomplish the objectives. There is little doubt from the language that the Labor Board will outlaw employer-dominated unions, and employee-representation plans

falling under its jurisdictions; "Yellow dog" (22) contracts will be (or should be) nullified; in brief, the law attempts to make it illegal for employers to influence, for their benefit, their employees. The fallacy underlying the second unfair labor practice is the assumption that all company-unions and employee-representation plans are intrinsically bad; the assumption is, of course, unjustifiable. It is also unjustifiable to assume that a labor organization of the type represented by the American Federation of Labor can be the solution to industrial strife as the section apparently assumes! It seems to be a matter of opinion which view one should take.

Section 8 (3) of the Act declares it to be "unfair labor practice for an employer to use discrimination in regard to hire or tenure or employment, or any term or condition of employment, or to encourage or discourage membership in any labor organization" (23). The fault in this third unfair labor practice lies in the exact meaning of the word "discrimination". As used in the Act, it may be interpreted to mean petty discriminations to outrageous

dismissals. One illustration of discrimination is indicated by an employer who is willing to pay non-union men for time lost during a strike but will not pay union men. Another form of discrimination is found in the increases in wages and promotions. The most com on form of discrimination is the dismissal of an employee because of his union membership.

Although the third unfair labor practice seem beneficial to all, the fact is that it infringes upon the right of employers to hire, promote and dismiss workers.

The fourth unfair labor practice, (Section 8(4) of the Act), which is self-explanatory, states that "it shall be an unfair labor practice for an employer to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act". (24)

Section 8(5), giving the fifth and final unfair labor practice, has to do with an employer's refusal to bargain collectively. "It shall be an unfair labor practice for an employer to refuse to bargain collectively with the representatives of a majority of his workers within a unit appropriate for collective bargaining". (25) The purpose of this provision is

intended to induce or compel employers to make collective agreements with their employees. The employer is guilty if he refuses to receive employee-representatives at a reasonable time for purposes of collective bargaining. If he does receive them he can match the demands of the employees, with counter-proposals. In such a case, the Board will have to determine the meaning of the term "Bargain". In brief, "bargaining is the process of negotiation while, if persisted long enough, will produce some kind of an agreement between the parties". (26) And if the employees-employer do not come to an agreement will the Government exert pressure upon the employer to make concessions? If it does, then the employer would be a victim of a "unilateral compulsory arbitration" (27). The answer seems to lie in the power and administration of the National Labor Relations Board. This fifth unfair labor practice is perhaps the major test of the administration of the Board.

Thus, we have noted the unfair labor practices as specified by the Wagner Act. They are intended, in the first place, "to protect employees in their right to organize for lawful purposes, including that of collective bargaining, against the interference of

employers of labor or their agents". (28) In the second place, they are intended to induce or force collective agreements between employer and his employees with respect to "rates of pay, wages, hours of employment and other working conditions".

Representations and Elections:

In reference to the representatives of the employees and the election of their representatives, the purpose of the Act is to give the employees total freedom of choice in the matter. The Act gives the employees exclusive right, and since the employer has no legal concern, he is not expected to interfere. Furthermore, the employer must receive the representatives of his employees once they are elected, and cannot refuse them because of personal objections.

Section 9(a) of the Act sets forth what is known as the "majority rule" of selecting representatives. This section of the Act provides that "representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes,

shall be the exclusive representatives of all of all the employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment". (29) In his report to the Senate, (30) Hon. David I. Walsh brings out the point that by long experience, the majority rule has been discovered best for both employees and employers. It is well known that the workers have found it impossible to approach their employers in a friendly manner if they remained divided among themselves. The employers have also found it conducive to harmonious labor relations to negotiate with representatives chosen by the majority than with "numerous warring fractions". However, it must not be implied that the minority is not to be heard; the voice of the minority must be heard in collective negotiations.

The employers have objected to this feature of the Act principally because they were afraid of the collective strength of organized labor. There is, I think, a temptation for organized labor to step into the picture; the Act is a strong ally of organized labor. However, it is also true that the employers object to the majority rule because they wish to be

their own labor leaders and because they are as distrustful of labor leaders as the average workman is of his employer. It is a beautiful case of "mixed-up emotional states, repressed jealousy and mutual distrust------often founded on good grounds on both sides." (31)

In the matter of receiving representatives, obviously, the employer is justified in refusing to bargain with them if they speak for a selected group of the total. Consequently, it is in the interest of the employer----and employees----to make certain two points before receiving representatives. In the first place, the employer is entitled to know if the alleged representatives represent the appropriate unit which the law requires him to recognize for collective bargaining. Secondly, he is entitled to know with certainty that the representatives really have authority to speak for a majority of the employees.

To settle any controversy that may arise in this connection, Section 9(c) of the Act declares that "whenever a question affecting commerce arises concerning the representatives of the employees, the Board has power to investigate such controversy and certify to the parties, in writing, the name or names

of the representatives that have been designated or selected" (32) by the majority to represent them in bargaining collectively.

Investigating such controversies, hearings will revolve about several issues:

In the first place, the Board will have to seek enough information as to whether the controversy concerning representation "affects commerce".

In the second place, the Board will have to ascertain if the group of workers is an appropriate unit for purposes of collective bargaining.

In the third place, the Board will have to look into the circumstances of each controversy with a view of determining whether a secret poll of the employees is necessary and appropriate in its attempt to settle the controversy. It is a question of evidence which is sometimes difficult to acquire.

In the fourth place, the Board, in conducting the hearing to approve the representatives, will have to decide as to the eligible persons for representatives. On the basis of such information, the Board will "certify to the parties, in writing, the name or names of the representatives that have been designated or selected".

It is interesting to note the effect of Section 9(c) of the Act from the point of view of the employees and employers. From the point of view of the employer, the fact that an election is scheduled and publicly announced in advance creates a situation unfavorable to him and his business. It produces the impression both to employees and to the public that the employer is in some manner in defiance of the Act. Moreover, the electioneering which goes on during the interval tends to demoralize his plant and to interfere with the normal operations of his business.

From the viewpoint of the individual employees, the fact that an election is publicly announced in advance is also unfortunate. During the interval it exposes employees to a concentrated attack on them and their families by representatives of organized groups. This is particularly unfortunate when it is remembered that individual employees, who may not be interested in joining a union, have no means of protecting themselves against such attacks. On the contrary, in the small shops it is very often the case where many workmen tell organizers" that they want to join the Union but that their boss won't let them. Then they tell the employer that they really hate the Union but do not dare to say so, and beg him

to get them off. If the employer'goes back on them,' then they vote for a strike to get even with the employer for not protecting them from the Union."(33)

In view of these circumstances, the Board should make a careful study of other methods of polling employees with a view of minimizing the embarrassment to the employer, individual workers, and minority groups. (34)

The National Labor Relations Board:

In order to make the law effective, the Act created a National Labor Relations Board. It is the third attempt of the present (Roosevelt) administration "to establish a labor tribunal to assist capital and labor in making their adjustment to a regime of collective bargaining which the administration wisely or unwisely envisages". (35)

President Roosevelt created a National Labor Board under Title I of the National Industrial Recovery Act, August 5, 1933. It was created to decide promptly on any dispute that would arise from the interpretation or application of the President's Re-employment Agreement. On December 16, 1933, the same Board was continued to adjust labor disputes

arising under the codes of fair competition and those arising out of re-employment agreement. On February 1, 1934, the Board was authorized to conduct an election and hear complaints against employers who violated their obligation under Section 7(a) of the National Industrial Recovery Act. This first Board continued to function most ineffectively until June 30, 1934.

The second attempt started on June 30, 1934 when the President, under Public Resolution No.44, created the National Labor Adjustment Board. When the Supreme Court decided against Section 3 of the National Industrial Recovery Act, the Board became helpless because Section 7(a) of the same act depended on Section 3. (36) However, even before the court decided, the Board was as ineffective and unsuccessful in securing compliance with its decisions as the National Labor Board.

The third attempt started July 5, 1935 when the President signed the National Labor Relations Act commonly known as the Wagner Act. The Act establishes a strong labor tribunal, quasi-judicial in character.

As to its organization, the Board created by the Wagner Act is composed of three members appointed by

the President with the advice and consent of the Senate. The President is empowered to "remove upon notice, for neglect of duty or malfeasance but for no other cause." One of the three members is designated as chairman of the Board. Two members constitute a quorum and have authority to act as the Board. (37)

The Board is created as an independent agency of the Government. The preceding boards, we recall, were a part of the Department of Labor. Presenting his Bill before the Senate, Senator Wagner stated, "I cannot urge too strongly that the National Labor Relations Board should be maintained as an independent agency of the Government. Collective Bargaining rights should be centered in one supreme board, instead of scattered among a number of boards. There is no more reason why the Board should be connected with the Department of Labor than why the Federal Trade Commission should be attached to the Department of Commerce. For years lawyers and economists have pleaded for a dignified administrative tribunal, detached from any particular administration that happens to be in power, and entitled to deal quasi-judicially with issues with which the courts

have neither the time nor the special facilities to cope. With such a tribunal in the offering, its integrity should be preserved." (38)

Obviously, the Department of Labor objected to the creation of a Board as an independent agency. In the preceding attempts, the Board was under the jurisdiction of the Department of Labor. In presenting her objection on the point to the Senate, Miss Perkins, our present Secretary of Labor, stated: (39) "Moreover, I think we have established the principle that these Boards should be quasi-judicial and not conciliation Boards.....I make one suggestion. I believe this board should be definitely located within the Department of Labor. An examination of the experience of other agencies of the Government leads me definitely to this conclusion. In the first place, I think it is a mistake to create any further independent agencies in the Government, if it can be avoided. The danger of too many independent agencies in Government, of setting up an executive and administrative system, is so large and complicated that no President can really know what the development is.....I think another reason why it is unwise to establish this Board as an independent

agency, is not only the likelihood of duplication of conciliation activity, but also of duplication of other activities now carried on in the Department of Labor; particularly statistical and research work. I think there is bound to be an unnecessary duplication of that activity if it is an independent agency.....Moreover, it is highly important that all matters which relate to labor problems should be retained within the framework and structure of the Department of Labor."

However, Mr. Francis Biddle, Chairman of the National Labor Relations Board as created by Public Resolution No. 44,makes the same point quite explicit. "In my judgment, establishing the Board as an independent agency in the executive branch of the Government, is one of the most vital provisions of the bill. I wish to say also that all my observations are made from the long-range point of view. The value and success of any quasi-judicial Government board dealing with labor relations lies first and foremost in its independence and impartiality. After all, although the bill deals with the rights of labor, for the success of the machinery contemplated by the Act, it must in the long run have the confidence of in-

dustry and of the public at large. It seems to us that if the employees and agents of the National Board and any regional boards set up by it are appointed subject to the approval of the Secretary of Labor and are a part of the Department of Labor, and the Board is subject to the budgetary control of the Department, the machinery cannot be considered either impartial or independent. In view of this fact, it is inconsistent with such impartiality and independence to attach the Board to any department in the executive branch of the government, and particularly to a department whose function, in fact and in the public view, is to look after the interest of labor..... We conclude that every consideration of congressional precedent in like cases, of efficiency, of giving the Board an assured independence in its judicial and administrative work, requires that the Board be established as an independent agency in the Executive branch of the Government, as provided in the bill before your committee. To call the Board independent is not in fact to make it independent if it is within the Department of Labor and subject to the direct control of the Secretary of Labor both as to the appointment of its personnel and

as to the control of its expenses." (40)

It was only after much debating that Congress finally created the Board as an independent agency of the Government.

Outside of establishing the principal office in Washington, the Board is allowed (Section 4 of the Act) to establish or utilize regional or local agencies, "and utilize such voluntary and uncompensated services as may from time to time be needed." Because such regional or local agencies rendered valuable service under the preceding boards, the new Board has continued to divide the nation into regions and placing at the head of each district a regional director. Many now feel, however, that it is doubtful if the Government can muster sufficient uncompensated service for the effective operation of regional boards. It seems probable that although regional boards may be maintained, "one may safely predict that the Board will increasingly rely upon regional directors and upon examiners sent out from Washington to carry on the field work which will be necessary in the administration of the law." (41)

Jurisdiction of the Labor Board:

The Wagner Act limits the jurisdiction of the

Board to two types of labor controversies. The first (42) gives the Board power to investigate controversies concerning the representation of employees for purposes of collective bargaining. The second (43) empowers the Board to prevent any person from engaging in any of the listed unfair labor practices.(44) Even over these two classes of controversies, the Board's jurisdiction extends only to those disputes which arise "in commerce" or which "affect commerce".

The Act does not give to the Board any authority to engage in mediation, conciliation or arbitration; these activities are left entirely to the Department of Labor.

It is also significant to know that the Board has no power to do research work in the field of industrial relations; Section 4 of the Act states clearly that if the Board requires any statistical assistance, it must go to the Department of Labor for it.

Finally, the Board has no jurisdiction over disputes arising between competing unions or labor organizations. "Viewed generally, the Board is an

administrative agency, possessing legislative and judicial powers in addition to its administrative functions." (45)

Section 10 of the Act explains the procedure of the Board to prevent unfair labor practices. It states that "whenever it is charged that an employer has engaged or is engaging in any unfair labor practice the Board shall have the power to issue and cause to be served upon the employer, a complaint setting forth the charges and notifying the employer that a hearing on the complaint will be conducted at a designated place, at a time not less than five days after the service of the complaint". (46) Of course, any complaint can be amended by the Board at any time prior to the issuance of the order. The employer has a right to file an answer to the complaint but is not required to do so. He may also appear in person or through an agent and give testimony in his behalf and he may be allowed to introduce witnesses.

When the testimony is available, it is reduced in writing and filed with the Board. The Board then proceeds to make recommendations on the basis of the evidence it has. "If upon the testimony taken the Board shall be of the opinion that any person named in

the complaint has engaged in or is engaging in any such labor practice, then the Board shall state its findings of fact and issue and cause to be served on such person an order requiring him to "cease and desist" from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act." (47)

If the Board, on the other hand, finds that the person complained of is not guilty of the charges, the Board issues an order dismissing the complaint.

The Act carries the matter further. In order to make certain that the person getting a "cease and desist" order from the Board is being treated legally right, the statute makes adequate provision for a judicial review of the Board's orders in respect to the unfair labor practices. Thus, the final orders to be obeyed by the respondent of the complaint are issued from a federal court of jurisdiction and not from the Labor Board.

Controversies reach the courts in one of two ways. In the first place, if a person fails to comply with the order of the Board, the latter may

petition a federal court for the enforcement of its order. In the second place, the person ruled against may ask the federal courts to modify or set aside the order of the Board.

After having reviewed the record of the controversy and heard arguments, the court has the power to grant any relief as it deems just and proper.

Investigatory Powers of the Board:

The Act also provides, in order to facilitate the efforts of the Board in getting the facts of a controversy, certain specific investigatory powers. The Act provides that the Board or any of its designated agency "shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question." Furthermore, any member of the Board has the "power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its members, agent, or agency con-

ducting the hearing or investigation". (48)

A member of the Board or one designated by the Board has the power to administer oaths, affirmations, examine witnesses, and receive evidence.

If any person, subject to the jurisdiction of the Board fails to appear when called and refuses to produce evidence as required by the subpena, the Board has the right to apply to the federal court for an order requiring the witness to appear or produce evidence. If the witness disobeys the court order, he is subject to punishment for contempt of court.

However, the Board, using the investigatory power vested in it by the Act, is limited only to those functions specified in Section 9 and 10 of the Act. (49)

The Act declares two important limitations. The first provides that "nothing in the Act shall be construed so as to interfere with or impede or diminish in any way the right to strike". The second provides that if any part of the Act is held invalid, the remainder of the Act shall not be affected by such a ruling. (50)

In concluding this chapter, it is interesting to note the comparison of the preceding Boards with the

one established by the Wagner Act.

The old Labor Board was pathetically ineffective in securing compliance with its recommendations and decisions; as a matter of fact, it possessed no power to secure compliance. To help it fail, the Department of Justice evinced no enthusiasm to take action against those employers who chose to ignore the decision of the Board.

However, in creating the new Board, Congress has vested in it ample power to secure compliance. If the Board now fails to secure compliance, it certainly will not be because of lack of power. The Board has adequate sanctions for the enforcement of the law.

In securing evidence concerning labor controversies, the new Labor Board is so much better equipped than the old. It has the power to require persons to appear before the Board or to produce needed evidence and, if a person fails to do so, the Board can force him to abide by securing an order from the federal courts which would make that person, if he continued to disobey, liable to the court for contempt.

The new Board has the power to administer "oaths or affirmations to witnesses in getting facts. Any

person who swears falsely before the Board is subject to severe punishment for the criminal offense of perjury". (51)

Much of the success of the Board will depend on the constitutionality of the Act. It has not as yet been tried in the Supreme Court and the present administration is not particularly enthusiastic to have the Act tried before the Supreme Court of the United States. But until the Act is put to a trial for its constitutionality, we can conclude that the Labor Board created by the Act has all the power needed to secure compliance with its orders. And if its administration breaks down, it will not be because the Board lacks power, but because Congress has set before it an impossible task. (52)

CHAPTER III

HEARINGS ON THE WAGNER BILL BEFORE THE COMMITTEE ON EDUCATION AND LABOR

I don't suppose anything has ever been suggested, or ever will be suggested which has not aroused, or will not arouse three types of human beings.

The first type is the pessimist who always sees the disadvantages of things, who hates to change from the old order to the new and who is ever-ready to present arguments to oppose such things. Whether he is led by selfish, personal reasons, for social benefit or for fear of the effects of such changes is rather difficult to say. However, I rather have a feeling that selfish, personal reasons and fear of the effects underlie his arguments.

The second type is the "one who doesn't give a damn". It is the type of a person who is not interested in his environment, knows not what new changes are taking place and cares less. We could name such a person, "a neutral person"; regardless of his name, this type of a person is satisfied to live life as it comes, day-in and day-out, believing that world progress is vested entirely in a Supreme Power. World progress,

especially social progress, is hardly a result of this type of a person.

The third type is the optimist who sees the advantage of new things and new ideas, foresees their potentialities from the light of social benefit as well as personal. It is this type that fosters new ideas and is ready to argue in their favor. The United States owes its great advance to world dominance to the optimist. The American Revolution would never have been fought and won had it not been for this type of persons. The same is true of the Civil War and the freedom of slaves! Need we say any more to show that this type is really and truly the leader in political, economic, social, educational and industrial advancement?

In the field of labor, we can apply the same principles. The Labor Act under discussion, regardless of method, is an endeavor on the part of the Government to bring about a better relationship between employers and employees. The purpose is not to better the employees at the expense of the employers; or vice-versa; and yet, the Act, in purpose and not method, has its pessimists and neutral persons as well as its optimists.

The purpose of this chapter, then, is to present the arguments in support of and in opposition to the Wagner Act. The reader will note that the arguments herein presented are from the viewpoint of several fields of endeavor. I have taken much care to present the arguments from the point of view of educators, labor organizations, politicians, business men, and even religious organizations.

Dean Lloyd K. Garrison, Dean of the Law School of the University of Wisconsin (1), presents interesting arguments in support of the Wagner Act. He endorses the Act on three bases. First, as a safety measure because he regards organized labor in this country as the chief bulwark against communism and other revolutionary movements. Second, as an economic measure because as costs decrease and profits increase, it is absolutely essential that the level of wages should be increased to make possible the necessary purchasing power of the mass; and the best method to maintain and increase the purchasing power of the mass is by means of collective bargaining. His third argument in support of the bill is "a matter of simple justice. The economic power of employers, particularly of large industries, completely overshadows the economic powers of the workers unless the latter are

organized. It seems to me utterly unfair and unjust for employers to prevent the free organization of their workers by the various forms of discrimination which have been prevalent in this country." (1a)

One of the major arguments presented against the Wagner Act is directed against the majority rule of electing representatives. Dean Garrison discusses the point at length. He points out the fact that it is evident that the employers who oppose the rule merely do so because they want to avoid doing any collective bargaining, and they will succeed as long as they can keep their employees diffused and not organized.

Another argument to oppose the Wagner Act is that it tends to abolish the company unions. Dean Garrison points out that the company union is not only an instrument of the employer in most instances but also that no "company union, however set up, can possibly be effective as a collective bargaining agency for the very simple reason that the representatives of the company union are themselves employees, who are subject to being fired at any moment, who are looking for advancement, and therefore, subconsciously

hope to curry favor with their employer by being polite and courteous, and not bringing up disagreeable matters. Furthermore, the company union representatives, being simply employees within the plant, have no means of knowing what the conditions of the industry are, what other plants are paying, what the wage level of the industry is, and they simply have not the information necessary to make them competent representatives of the men. ... ...Finally, with the company union set-up, it is impossible ever to conceive of reaching industry-wide agreements, because each plant is treated as a thing in itself, and the talks go on within the plant without the least reference to the other units in the industry. Personally, it would seem to me altogether very desirable, if it could be done, to legislate the company unions altogether out of existence, regardless of whether they are dominated by the employer, or set up by the employer, or financed by him, because I think we shall make no progress under them whatsoever." (1b)

Referring to the matter of the independence of the Board as set-up by the Wagner Act, the Dean thinks the Board is best as an independent agency, and the general public should know about its independency; "the supremacy of the Board is very important for

without it, nothing but confusion can result." (1c)

Professor H. A. Millis (2), Head of the Department of Economics at the University of Chicago, gives arguments to support the Wagner Act. He maintains that the Act is a correct step toward creating a better industrial relationship. The Act from his point of view, is fundamentally sound because----------

1/ the great majority of wage-earners are employed under such conditions that they must act in concert with reference to wage scales, hours and working conditions if they are to have a reasonably effective voice as to the terms on which they shall work;

2/ the average employer, however appreciative he may be of the values of good employment conditions and the needs of his workers, is under the necessity of reducing costs because of the many saving, chiseling practices of his less socially minded competitors;

3/ a measure of control of wages is necessary if the needed relationship between consuming power and production is to be maintained, and general instability checked;

4/ if and when collective bargaining is definitely free from undue militancy, as it can be when wise

management and good labor leadership are brought into cooperation, special problems connected with collective bargaining clear up and there are opportunities for gain to all parties.

Mr. Harold Shapiro, Professor of administrative law at the New York Law School (3), gives a very interesting angle in favor of the Act. He states that regardless of what might motivate an employer to favor labor union regulation, it is his belief that labor should be regulated for its own good, for the perpetuation of the union-labor idea, for the protection of the large number of non-union of employees who will be brought into unions inevitably under the provisions of the Wagner bill, and for the protection of the general public which suffers whenever there is maladjustment in industry. Certain it is that if labor unions were subject to government supervision, it would result in happier days for the rank and file of labor unions and the employers alike. "I am not talking of imposing a code upon labor. I am asking that labor be accorded the same privilege of presenting its own code at least to the extent of giving labor the opportunity of setting forth what in its

mind are the greatest abuses within labor organizations, so that a house cleaning might be effected comparable to what is happening in bar associations, in various other professional groups and throughout the length and breadth of the land for the protection of large groups of so-called "forgotten men". He expresses his further contention that the day has come when the union worker, who too frequently has been silent because of fear to speak, because of the fact that persons in union offices have perpetuated themselves, and without the same restraint which is required of other groups, shall be given this "Magna Charta of Labor" which should be recognized and protected by the Government in the efforts of employees as members of a union to survive in what may be eventually the only source of employment, or the only means to employment that may be available to such union members.

From the lips of John L. Lewis (4) come several reasons why he is in support of the Wagner Act. In this thesis, we need to cite the most important reasons; he points out that the "right of labor to collectively bargain for wages and hours of labor has double justifi-

cation. It is fundamentally just in that it gives to labor an approach to equality with industrial management, and it should result in a fair distribution of the national income." (4a) He advances the belief that company unions are really the result of fear on the part of workmen that they might lose their jobs unless they accept such organizations. Mr. Lewis points out that there is also a question of confidence involved. He continues: "With the elimination of confidence, it is obvious to anyone that any arrangement involving human relations, will not function. Confidence is necessary from every standpoint, and when the confidence of the workers is destroyed by what seems to be a studied attempt to take away from them rights which they should have, it is no longer necessary to wonder why the workers of this country lose confidence in some of the efforts of the Government to enlarge their opportunities and create for them equality in bargaining power and opportunity." (4b) The policy of the Wagner bill is to relieve them of this fear and to restore confidence.

Let us cite the views of a business man. (5) "I firmly believe that the organization of workers under the American Federation of Labor plan leads to better

wages, fewer hours, and improved working conditions; that vast benefits can accrue to the employer, that it develops character, fosters, justice and tolerance, and makes for better economic conditions in the Nation. My experience has convinced me that organized labor is a great constructive force in the betterment of economic growth, as applied to industrial relations. There is no question but what the application of this philosophy has made consistently for the betterment of conditions of employment and progress of my company. Having witnessed at first hand the benefits that accrue to all through collective bargaining, I have become thoroughly imbued with that principle, and have operated my plant on a strictly union-shop basis and have never once regretted my contracts with my employees. We have found that not only the workers in our plant have been willing to live up to their agreements but the officials of the international union as well have always been more than anxious that agreements were not violated and that the rank and file live up to their contracts. We feel that this has been a very splendid arrangement for us as well as for the men. It has prevented agitation from the out-

side and radical agitation from the inside. It has prevented the management being harrassed by workers on trivial matters. Contacts with the workers have always been through their shop committees. On some occasions some small groups in our plant would feel that they were not receiving in exact proportion with what others were, but in every instance it was the union who brought to their attention the fact that they had a signed agreement with our company, and all disputes were quickly settled, causing us no inconvenience whatever. During all these years I have taken the position that it is far better to have signed agreements with labor than to have constant controversy with them. In fact, so great is my belief that I have constantly championed the cause of labor. This has led to many discussions with other employers, and these discussions have convinced that more misinformation has been spread upon this subject than upon any other. I refer to misinformation regarding the iniquities of the producer in industry. I have known many business men, who, while they appeared to be reasonably fair in most matters, when discussing the subject of organized labor seemed to lose all sense of proportion and made exaggerated statements about organized

labor which were without any foundation of truth. They have been quick to damn and condemn officials of organized labor, assuming, and in most cases without first-hand knowledge, that these leaders were grafters, that they were men who mulct the members of their unions. I have always known the care with which the rank and file of organized labor select their officials. If our country is to effectuate recovery and again reach a place where labor can buy back the products it produces, we must see to it that labor shall have some voice in the determination of conditions under which they work and wages which they are to receive. I am fully convinced that the labor of an individual is not a commodity or an article of commerce to be bartered and bargained for. The worker should be given the right to organize. Organized labor symbolized by the American Federation of Labor stands squarely behind the worker and the fair employer. We believe in and heartily endorse their principles."

Dr. Goldstein, a rabbi(6), supports the bill on the following basis:
In the first place, it will legalize and make part

of the law of the land the right of labor to organize and to bargain collectively through representatives of its own choosing; in the second place, it will outlaw unfair practices on the part of employers, practices that are designed to weaken and destroy the labor movement in America. Furthermore, wages are increased, hours are shortened, and working conditions are improved only as the power of the workers increases through organization. The right to organize, to bargain collectively with the employer is a right that must be protected by law through some agency as the Wagner bill creates. The Nation will recover from this economic collapse only to the extent that the mass of the people recover their purchasing power, and purchasing power can come only through an increase in wages. The increase in wages in turn will come only as a result of the right of workers to organize and to enforce their demands upon the employers and employers' associations.

Mr. Madden, present chairman of the Board(7), regards the Wagner Act as a recognition of the right of employees to join their forces in what they con-

ceive to be their common cause and to authorize one or more representatives to speak for them as a group; a recognition that is perfectly lawful for such a group to apply to their industrial relations; the principle of representation upon which our American State and National Government are founded.

In concluding the arguments supporting the National Labor Relations Act, it is well, I think, to present those of the author of the bill, Senator Robert F. Wagner. (8) Briefly, Senator Wagner is not wholly opposed to the company unions. "It (the company union) has improved personal relations of employer-employees, it has improved group welfare activities and it has helped to improve discipline and other matters which may be handled on a local basis. But it has not helped that national status of employees." The bill is an endeavor to settle a major question which involves self-expression and democracy on the part of the employees; it is an attempt to eliminate employers' domination of the employees; it is an attempt to make it legal to forbid an employer to influence any organization which deals

with labor problems such as hours, wages, grievances, and so forth. Senator Wagner concludes by stating, "I am sure that employers as well as employees will favor the measure. It is merely another step toward Social Justice."

So much for the arguments in support of the Act; let us now consider arguments in opposition to the Act.

Mr. W . Gibson Carey, Jr., a business man,(9) has made some statements against the Wagner Act. In the first place, he feels that the relationship between labor and management are from every practical standpoint best handled locally on the ground that conditions vary in different localities. In answer to one of the assumptions on which the Wagner bill is based; namely that the employers exploit the employees, Mr. Carey points out the fact that the assumption is false. "Fair management is labor's best friend. Despite what has been said so many times, there is in well-run American business a unity of purpose extending from the president of a company to the yard laborer. In the long run it is my belief that the

utmost for the company and for the employees is attained when managements deal either directly with their men or through industrial councils, or company unions. My belief, and I think nearly all business men today agree, is that high wages are desirable from a great many viewpoints, but it must always be remembered that a company cannot be constructive either to the community at large or to its employees unless over the long-run the outgo is less than the income. The changing status of labor in the United States in the last hundred years has been tremendous. The standard of living has improved four-fold. The hours of labor have been decreased tremendously. These trends must in any fair man's mind be given great weight, since they show that without the Wagner Labor Relations bill really immense strides have been made by industrial employees." (9a) But Mr. Carey, or any other industrialist for that matter, does not suggest the horrible idea that the gains of industrial labor and the strides made by industry may have been at the expense of the farmer and the white-collar group.

In answer to the argument against company unions, Mr. Carey states: "My point is that any trend toward the abolition of FAIR company unions or individual relationship between employees and employers is decidedly not in the public interest nor in the interest of the

employees themselves" (9b) Mr. Carey continues to point out that there may be company unions which are dominated by the employers, but the menace of "employee-domination is equally as great". He concludes: "I do maintain that in a well-run industrial institution, where men are receiving fair pay considering the general conditions in the industry and in the business in question, there is no reason why there should be placed on the men the added cost of union dues. I make the plea that decent employers who are, in my opinion, greatly in the majority both in numbers and in the numbers of their employees, should not be penalized because of the action of such unscrupulous employers as there may be. I say without qualification that employers who are not giving their men a thoroughly square deal considering the condition of their business should be curbed. It is evident that unfair treatment of employees is almost as disastrous to a fair competitor as it is to the employees who are being injured." (9c)

Mr. McAuliffe views his oppositions to the Wagner Act from the point of view of labor (10). His first argument is that he does not believe the Act

can be administered successfully under any form of government short of a military dictatorship. For his second argument, Mr. McAuliffe points out that no law which tries to prescribe uniform habits for 120,000,000 persons can ever be practical. The failure of the Prohibition Act and the National Industrial Recovery Act are outstanding examples of such recent endeavors. (10a) He contends further that the measure is one-sided, "intended to extend the privileges of labor without attaching any corresponding degree of responsibility. Labor can appeal to the law for redress, and while the findings of the Labor Board are made mandatory on the employers, the employees cannot be compelled to accept same". Another common weakness of the Act lies in the fact that the consumer of the product of the mill, factory, or mine subject to the law, he who pays the bills, is accorded no rights toward a continuing supply of the material or product involved in the controversy; "the repudiation of a legal award, sanctioned under the Act, damaging not alone the employer but the consumer, who had no place in the proceedings." (10b) "In conclusion, no law can be successfully enforced that attempts to put all labor, even in one line of service, on the same

earning basis. There are too many small industries to warrant belief in success. Again I will venture the opinion that of the unemployed that exist today, not less than one-fourth of the number are in a way unfit. They cannot earn a full day's wage in a highly competitive world, and their services and their support can only be cared for by individual and flexible labor relationship." (10c)

Mr. E.R. Lederer, (11) from a practical point of view, feels that the law is really placing the United States behind the American Federation of Labor; that is, the company unions will be outlawed, and all the benefits which such organizations actually have for their employees will cease and the men enjoying them will be deprived of the advantages. In reference to the majority rule as set up by the Act, Mr. Lederer thinks it is very un-American and the forerunner of the closed shop. "It certainly seems to be coercion of the cruelest kind to force a minority, unwilling to pay the dues and submit to the by-laws of labor organizations, either to join in order to be permitted to earn a livelihood or to be deprived of a job." (11a) To continue: "It seems that all the burden under this

bill is placed on industry and employers. If this law is intended to give labor organizations such a far-reaching authority, it certainly should provide also for full responsibility of the individual labor organization. As the bill now stands, it will, in our opinion, encourage disputes, strikes and unrest, and disrupt the progress industry has made in re-employment and the improvement of our economic situation." (11b) Mr. Lederer, of course, has contradicted himself. "He points out the burden of Union membership on unwilling minorities, and then, says calmly that all the burden falls on industry and employers. Evidently, he does not take his own first statement very seriously." (11c)

Perhaps, the following (12) point of view suggests the attitude underlying all the arguments in opposition to the Wagner Act. "We are in favor of the purpose cited by the bill but we are definitely of the opinion that the bill, as written, will not only fail to accomplish the intended objectives, but will have the opposite effect, that is, it will increase the causes of labor disputes and deprive the worker of the individual rights to which he, as a free American citizen,

is entitled. The bill endorses and makes compulsory the principle of majority rule for purposes of collective bargaining. The rights of the minorities are given little thought in the bill. Then, too, the recognition of individual merit of workers may be made practically impossible if by chance the majority of the group in which an individual is working adopts seniority as the criterion of advancement. The inevitable effect of the unfair labor practices will be to diminish the highly desirable personal relationship of management and men that has resulted from years of close working contact. The Wagner bill, as written, is unfair to both employees and employers, It will have the direct effect of aggravating those conditions which it is intended to improve, and therefore, retard recovery.

In a letter to Senator Walsh, a committee of five (13) expresses the reasons for its opposition to the bill:

1/ It denies the minority a voice in vital matters affecting their welfare.

2/ In effect, it establishes a monopoly in labor representation. Under existing conditions, it is e-

vidently biased in favor of one organization.

3/ It does not place any responsibility or limitations upon the majority, nor any restrictions as to tactics employed. Even if labor organizations are defeated in several instances, there is nothing to prevent their intimidating and coercing the majority.

4/ It releases a gigantic attempt to secure the closed shop in industry. This would result in considerable unrest as workers resisted this regimentation.

5/ The bill is not one of equity, even to the workers whom it is intended to benefit.

To summarize the major arguments opposing the Wagner bill, let us cite those made by Mr. Axtell J. Byles, President of the American Petroleum Institute.(14)

1/ Despite its avowed declaration, the bill does not leave the individual employee or any minority group of employees free to choose the method of bargaining.

2/ The bill is wrongly premised in that it will foster discord and dispute between labor and management rather than further peaceful industrial relationship. The bill injects an outside organization between the employees and their employer regardless of how effective and satisfactory their collective bargaining agency has

been in the past.

3/ The bill proposes to direct by Government fiat the type of labor union or organization which may exist, thereby in effect creating a labor monopoly without authority in the Government to regulate such a monopoly and compel observance of fair practices. It leads to further encroachment upon what are now recognized as the inherent rights of labor.

4/ The bill confers upon a Labor Board and its agents drastic, unwarranted, and probably unconstitutional powers. As it stands, the bill is primarily framed to confer rights and powers not upon American labor but upon the National Labor Relations Board and upon labor organizers. The Board could intercede to establish the units of collective bargaining or to render a decision on a controversy without invitation from either parties concerned; or if both parties had agreed to a procedure, including the selection of a board of arbitration, the National Labor Relations Board might intervene to change the procedure.

5/ The bill abrogates existing contracts between employer and employees without regard to their merit or benefit to either or both parties to the contract.

6/ The effect and probable intent of the bill is to destroy what is known as "employee-representa-

tion plans", many of which have existed satisfactorily to workers in the particular company for a long period of time.

Thus, we realize that the Wagner bill has its faults and fallacies as well as its good points. It is easier, of course, to present arguments against the Wagner Act; it is always so much easier to criticize a thing!

Regarding the arguments presented in support of and in opposition to the Act, there are three general conclusions underlying them.

From the standpoint of employers, in general they stand solidly against the Wagner Act. Typical of employer-opposition is a statement made by Mr. James A. Emery, counsel for the National Association of Manufacturers, before a New York audience: "Your Senator (Robert F. Wagner) proposed an anti-lynch law for persecuted blacks; now he has sponsored a new lynching law for intimidated whites." (15)

From the standpoint of employees and organized labor, they stand, in general, solidly in support of the law. However, some labor leaders privately confess that the law may mean the end of trade unionism in its present form. There is a basis for this fear.

A business periodical recently predicted that within five years organized labor would ask for the repeal of the Wagner Act. (16)

From the standpoint of society, it is rather difficult to decide. Organized labor, employees and employers are generally in agreement with the underlying objectives of the Act. Both sides do not deny that industrial strife and economic adjustment are vital problems in our present system and must be dealt with not only from society's point of view but also from the inefficiency and wasteful results occurring from labor disputes. The arguments presented, from the standpoint of society, seem to be a question of method rather than purpose. The arguments presented to support the Act attempt to show that the Wagner Act is "the" law that has been lacking to bring an end to labor disputes, lower wages and lengthy working days; it explicitly and implicitly promises, by means of collective bargaining, higher wages, better working conditions, and so forth.

The arguments presented to oppose the Act attempt to show that the Wagner Act is a law that will tend, by its very nature, to increase labor disputes, break down personal relationship in industry, and so forth.

Enough time has not elapsed since the Act was enacted into law to even attempt to show which one of the opposing side may be justified. Until one side or the other is justified by facts, opinions and arguments can only be relative and personal.

CHAPTER IV

HISTORICAL PRECEDENTS AND CONSTITUTIONAL ISSUES OF THE WAGNER ACT

In presenting this chapter, our purpose is to note---and perhaps be able to predict---what success the Wagner Act will have before the Federal Courts, expecially the Supreme Court. Employers generally are not greatly concerned over the Act in question because they feel that the law will never be put into general operation, and that it will experience a fate similar to that of Section 7(a) of the National Industrial Recovery Act if and when the Act is tried before the Supreme Court.

Employers and labor organizations generally feel just the opposite. For the basis of their arguments, they point to several preceding laws and court decisions. The constitutionality of the Wagner Act is a question that must be settled sooner or later. The employers are eager to have the Act tried immediately; the administrators and supporters of the law are rather reluctant in view of the recent decisions handed out by the Supreme Court against New Deal legislation.

In this chapter, then, we shall endeavor to point out specific laws that have preceded the Wagner Act and which have something in common with the Wagner Act. In the latter half of this chapter, we shall consider the more important issues upon which the Supreme Court will be asked to pass judgment when controversies involving them come before it.

HISTORICAL PRECEDENTS

The substantive feature of the National Labor Relations Board are not new but merely codify and clarify the policy already declared by Congress in different fields of industry, trade, and transportation.

In 1926, the Railway Labor Act was enacted into law. The purpose was to avoid labor controversies between railway employers and employees because such controversies were against the public interests. In Section 2 of the Act (1), the collective bargaining principle is in close analogy with the Wagner Act. Section 2 provides that:

"First. It shall be the duty of all carriers, their officers, agents, and employers, to exert every reasonable effort to make and maintain agreements concerning

rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier and its employees shall be considered and, if possible, decided with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purpose of this act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other.

Fourth. In case of a dispute between a carrier and its employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be

the duty of the designated representative or representatives of such carrier and of such employers, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held." (2)

Surely the Wagner Act, which provides for collective bargaining between employees and employers, which provides a method of representation for the employees and the procedure in order to settle labor controversies, does not differ from the Railway Act of 1926! The difference seems to be only in the wording of both acts and the industries involved; the underlying principle, however, is certainly the same!

The Norris--La Guardia Anti-Injunction Act of 1932 (3) which is "An Act to amend the Judicial code and to define and limit the jurisdiction of courts sitting on equity and for other purposes." (4) It is the latest federal pronouncement on the subject of contempt procedure and punishment. Note what a close analogy there is between the Wagner Act and Section 2 of the Norris--La Guardia Act which states that:

"Under prevailing economic conditions, developed with the aid of governmental authority for owners of property

to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." (4)

The Bankruptcy Act of March 3, 1933 has something in common with the Wagner Act. (5) The purpose of this act was to amend the Act of July 1, 1898 which established a uniform system of bankruptcy throughout the U. S., Section 77, which is very much in common with the Wagner Act, provides that:

"No judge or trustee acting under this act shall

deny or in any way question the right of employees in the property under his jurisdiction to join the labor organization of their choice, and it shall be unlawful for any judge, trustee, or receiver to interfere in any way with the organization of employees, or to use the funds of the railroad under his jurisdiction, in maintaining so-called 'company unions' or to influence or coerce employees in an effort to induce them to join or remain members of such company unions.

"No judge, trustee, or receiver acting under this act shall require any person seeking employment on the property under his jurisdiction to sign any contract or agreement promising to join or to refuse to join a labor organization; and if such contract has been enforced on the property prior to the property coming under the jurisdiction of said judge, trustee, or receiver, then the said judge, trustee, or receiver, as soon as the matter is called to his attention, shall notify the employees by an appropriate order that said contract has been discarded and is no longer binding on them in any way." (6)

Section 7 (e) of the Act establishing a Federal

Coordinator of Transportation (7) is closely allied with certain aspects of the Wagner Act. This Act was enacted into law "to relieve the existing national emergency in relation to interstate railroad transportation." (8) Section 7 (e) of this Act merely provides that employers must comply with the provisions of the acts we have already discussed.
It provides that:

"Carriers whether under control of a judge, trustee, receiver, or private management, shall be required to comply with the provisions of the Railway Labor Act and with the provisions of section 77 of the bankruptcy act approved March 3, 1933." (8)

We have already notated the close alliance that existed between section 7 (a) of the National Industrial Recovery Act and the Wagner Act. (9)

In presenting the historical precedents of the Act, the purpose is not to be exhaustive. On the other hand, it is to show that the constitutional basis for the Wagner Act is not new as we have shown by the preceding discussion; it is merely an application of the principle of collective bargaining to

labor and industry in general, while preceding laws on the same principle apply to specific industries.

CONSTITUTIONAL ISSUES

The constitutionality or unconstitutionality of the Wagner Act is (or can be) based on several issues. Writers on the subject, however, generally agree that the validity of the Act is dependent on four important issues:

1. Due Process of Law.
2. Interstate Commerce
3. Unwarranted Delegation of Powers.
4. Freedom of Association.

Due Process Of Law:

On behalf of the employers, it is contended that the National Labor Relations Act violates the Fifth Amendment of the Constitution which states, in part, that Congress shall make no law which "deprives a person of his life, liberty, or property without due process of law". Due process of law is a limitation upon the power of Congress to legislate and is a guarantee of fair treatment in terms of social and economic

ideals. It means, furthermore, that Congress in establishing standards of conduct, must not interfere with a person's liberty unless there is some social and economic justification for such interference. Among other things, a person's liberty includes freedom of contract. Of course, interpretation of the laws by Congress rest conclusively with the Supreme Court of the United States; "due process" in fact merely means what a majority of the Supreme Court consider "due". As the AAA minority pointed out, it is used by the Court to assume any veto power that it feels is proper. (10)

If we recall section 8 of the Wagner Act which defines the unfair labor practices (11), no one can deny that the section is designed to interfere with the employer's and employee's freedom to make individual contracts. As Dr. Donaldson states it, the section <u>removes</u> restrictions from one type of "free contract" and puts new ones on others. No absolutely free contract can exist in any society. One contract restricts another----so do the laws. The corporation set-up, for example, frees owners of debts, but also

--often-- of real owner-ship.

From the viewpoint of the employer, Section 8 of the Act interferes with the employer's freedom to make contracts with his employees, it forbids him to interfere with his employees, it forbids discrimination against an employee in order to discourage or encourage membership in a labor organization and it forbids an employer to help or support such labor organization. Finally, the employer is forced to bargain collectively with a view of reaching an agreement on wages, hours and working conditions.

From the point of view of the employees, Section 8 tends to limit their freedom of contract. It will certainly tend to eliminate employees making individual contracts with their employers. The Act requires that the minority be represented by representatives not of their own choosing. Practically speaking, the Act, from its very nature, may force employees to either quit their jobs or join a particular labor organization.

Strict enforcement of various provisions of the Wagner Labor Act will very often interfere with the

freedom of contract both of the employer and the employee. Under such conditions, the Supreme Court will have to decide whether, under modern conditions, there is some social and economic justification for such interference with the freedom of contract. The Supreme Court will have to decide whether the object of the law is justifiable to interfere with the individual rights as set up by the Fifth Amendment of the Constitution.

No one will deny----not even the Supreme Court---- that the object of the law, namely, to lessen industrial strife, to remove burdens of interstate commerce, and in general to stabilize the economic system by encouraging collective bargaining between employees and employers, is a legitimate object. In this connection, the really important issue is whether the method provided by the Act for the accomplishment of the objective is fair, reasonable and effective under modern conditions. If the method employed is fair, reasonable and effective, the Supreme Court can deny due-process to individuals affected by the Act providing there is social and economic justification for the denial of

such individual rights.

In presenting his Senate Report (12) to Congress, Senator Walsh pointed out a recent decision by the Supreme Court (13) on the due-process point. The case was brought in court to restrain the railroad from interfering with the right of its employees to self-organization and the designation of representatives in violation of the Railway Labor Act of 1926. The Supreme Court compelled the railroad company "(a) to completely disestablish its company union as representative of its employees; (b) to reinstate the brotherhood as the representative of all employees until they should make another free choice; (c) to restore to service and to reinstate certain employees who had been discharged for activities in behalf of the brotherhood." (14)
The Supreme Court continues:
"The legality of collective action on the part of employees in order to safeguard their proper interests is not to be disputed. It has long been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates

of pay and conditions of work." (15)

Considering the first four unfair labor practices (16), there is some basis to believe that the Supreme Court will not find any constitutional flaws with them since they are designed to protect workers in the exercise of their rights. In a sense, labor has traditionally, but not legally, always enjoyed such rights as set up by the first four unfair labor practices. In the light of such traditional rights, many who opposed the Act before the Committee on Education and Labor argued on the principle that the law was unnecessary since labor already did enjoy such rights.

From the point of view of due process of law, the doubtful aspect of Section 8 seems to lie in the fifth unfair labor practice which declares that "it shall be an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees". This unfair labor practice undoubtedly interferes directly with the right of persons to have freedom of association as stated in the Constitution. One author (17) explains the effect that the fifth unfair labor practice may have. "This provision is

intended to do something more than equalize the bargaining power between employer and employee; it is clearly intended to force the employer to enter into collective agreements with the representatives of a majority of workers within a given bargaining unit. This, as previously pointed out, if it means anything at all, will inevitably operate as a species of unilateral compulsory arbitration. Section 13 of the Act expressly reserves to employees the right to strike. This means that employees may at any time strike against a proposal of an employer or even against an unfavorable decision of the Labor Board. The employer, however, is forced under threat of penalty to bargain with a view of reaching an agreement, although he is not forced to agree to <u>anything.</u> In practice, this is likely to mean that in many situations the employer will be forced to make concessions for the sake of peace, not because he is convinced of the justice of the demands of the workers and not because of their collective strength, but because of the fear of the disciplinary action which the government may take if he does not make some concessions. This is not true collective bargaining.

It is government wage-fixing by indirection. It is a species of unilateral compulsory arbitration."

Of course, the fifth unfair labor practice does not openly avow compulsory arbitration. But it has an indirect effect to do that very thing; it compels the employer to reach an agreement which he otherwise would not make with his employees while the government stands by with a threat to penalize his refusals.

It is the fifth unfair labor practice that makes the Wagner Act unconstitutionally unreliable. The government, of course, will argue that this fifth unfair labor practice is valid in view of the disparity in bargaining power between employer and employee, that under modern conditions the mere protection of employees to organize is not sufficient and that, therefore, the government through the National Labor Relations Board must throw its weight behind organized labor in forcing employers to reach collective agreements. One author (18) concludes:
"Although the Supreme Court may be persuaded to accept the government's viewpoint, the odds are against the possibility."

The validity of the majority rule as stipulated

in Section 9 (a) of the Wagner Act will also be most vigorously contested. Section 9 (a) provides that representatives of the employees shall be chosen by a majority rule in a given unit and such representatives shall be exclusive representatives of the entire unit. In this respect, employers will contend that this section of the Act unreasonably interferes with their freedom of contract by preventing them from bargaining with individuals or minority groups. Minority groups and individuals, if stimulated by employers, will make a similar objection to the majority rule.

However, the government will argue that the majority rule is not actually a part of the objective of the Wagner Act but only an incident of the employer's duty, established by the Act, to bargain collectively with the representatives of the employees. "It is merely a mechanism or device which Congress has authorized the Labor Board to employ in carrying out the social policy crystallized in the fifth unfair labor practice." (19)

If we admit that the majority rule is only a "means to an end", the only question with which the Court need concern itself is whether the majority rule

is a fair and reasonable device in a scheme of collective bargaining. It seems, of course, that the majority rule, while it may not be the best, is certainly a fair and reasonable means for collective bargaining; and it must be remembered that due process of law does not require that Congress adopt the best available means; it requires only that Congress use fair and reasonable means to accomplish its legitimate ends.

If the Supreme Court adopts the viewpoint of the government-----that the majority rule is merely a fair and reasonable means to accomplish an end-----it seems unlikely that the Supreme Court will find any fault with the majority rule as a means of collective-bargaining representation.

However, if the Court should decide against the fifth unfair labor practice which states that the employer cannot refuse to bargain collectively with his employee's representatives, then the majority rule as declared in Section 9 (a) of the Act will lose its significance since the provisions of Section 9 (a) depend on the fifth unfair labor practice. In such an event, of course, whether the employer will or will not receive representatives for all employees will become a matter of "voluntary negotiations

and collective strength." (20)

In regard to due process of law, it also means that Congress must establish a legal machinery to provide for every person a fair hearing. The Supreme Court has always held that a judicial review is an indispensable element of a fair hearing.

Now, it is doubtful whether the National Labor Relations Act makes any provisions for a judicial review of the proceedings of the Labor Board, and if the Court concludes that the Act neither expressly or by implication provides for a judicial review, the Act will be held invalid under the "due process of law" clause. However, there is always the possibility that the Court may be persuaded to rule in favor of the Act following the legislative intent expressed in the Report of the Senate Committee on Education and Labor. (21)

Interstate Commerce:

If the "freedom of association" and "protection of life, liberty and property" are given as arguments to oppose the Wagner Act, the question of interstate commerce will not matter. However, the problem of

interstate commerce is another method of attacking the constitutionality of the act, and hence, must be considered. The Constitution of the United States provides that Congress shall have the power "to regulate commerce with foreign nations and among the several states and with the Indian Tribes". The Supreme Court has interpreted this clause to mean that Congress has not only the power to regulate interstate commerce but also the power to regulate intrastate commerce which directly and substantially affects commerce. (22)

This issue has come to the front ever since the Supreme Court in the Schechter case declared that a handler of live poultry in the state of New York was not engaged in interstate commerce and therefore, not subject to federal control under the National Industrial Recovery Act because the poultry had come to a permanent rest within the state. In this connection, however, even if the case had involved goods which continued to flow from New York to another state, it does not appear that the Supreme Court would have reversed its decision although there would have been an effect

on commerce and an obstruction to the free flow of goods. It seems that the Supreme Court would have found some way to "scrap" the National Industrial Recovery Act on the ground that it was not working well; and after all, the practical function of the court is, or should be, to destroy anything that does not work well. It resembles, in this respect, the English jury which destroys unpopular or obsolete law by refusing to enforce it. (23)

The problem facing the Supreme Court will be to determine whether a labor controversy affects interstate commerce and obstructs the free flow of goods from one state to another. No fast rule can be laid down as to what the Supreme Court will decide when dealing with this point. Writers agree that the decision on this issue will depend entirely on the case being considered by the Court.

If the case being considered involves a labor controversy which is a direct obstruction to interstate commerce, then the Supreme Court will undoubtedly hold the Act valid on this point. "However, it seems fairly certain that the Supreme Court will not

extend the application of the Act to include labor controversies which merely have an indirect effect upon interstate commerce." (24)

Hence, we realize that the Supreme Court will have to decide a question of fact, namely, whether a strike in a certain factory will affect commerce. The answer lies with the particular case that is being considered by the Supreme Court, and in this respect, no one can even attempt a prediction until a specific case goes to trial before the Supreme Court.

The entire issue of the commerce clause of the Constitution in its relation to the Wagner Act is well summed-up by one author. (25) "It is not likely that the Court will declare the Labor Act unconstitutional on the ground that Congress is attempting to regulate intrastate commerce in an unwarranted manner. It is more likely that the Court will in individual controversies decide whether a given labor controversy falls under the jurisdiction of the Board."

"On the basis of the decision of the Supreme Court with respect to the scope and meaning of the commerce

clause of the Constitution, it is impossible to predict the extent to which the Court will go in permitting the Labor Board to assume jurisdiction over labor controversies. The Court will, of course, permit the Board to intervene in all labor disputes arising in business and industries which are directly or indirectly engaged in the task of transporting goods, persons, or communications from one state to another. It is entirely possible that the Court will permit application of the statute to controversies arising in businesses which are in the current of commerce from state to state. It seems fairly certain that the Court will not permit the Board to intervene in labor controversies which affect commerce only indirectly through their effect on wage and price levels. There is, however, a strong possibility that it will give such a broad interpretation to the term 'affecting commerce' as to include practically all national businesses and industries."

Unwarranted Delegation of Powers:

There is one more issue, though not as outstand-

ing as the preceding two, on which the constitutional validity of the Wagner Act may depend. It is sometimes argued by the opposers of the Act that Congress has given to the Labor Board "unwarranted delegation of powers". That is, "it will be contended that Congress, in giving the Labor Board power to refine its definitions of unfair labor practices and to pass judgment upon the conduct of employers in specific situations, has combined legislative and judicial powers in an administrative board in violation of the theory of separation of governmental powers set forth by implication in the National Constitution." (26)

The opposition to the Wagner Act will point to one of the arguments on which the National Industrial Recovery Act was held unconstitutional. In substance, the Supreme Court declared that while Congress has the authority to delegate "powers to elaborate social policies for purposes of administration, it must define such powers and policies with reasonable definiteness". (27)

In this connection, Mr. Chief Justice Hughes expressed the thought quite well: "In view of the scope of that broad declaration, and of the nature of the few restrictions that are imposed, the President in approving or prescribing codes, and thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered. We think that the code-making authority thus conferred is an unconstitutional delegation of legislative power.

There is no doubt that the powers given the President by Congress under the National Industrial Recovery Act "transcended all reasonable bounds". It is doubtful, however, whether the Supreme Court will declare the Wagner Act unconstitutional on such an argument. In the first place, Congress in Section 8 of the Act (unfair labor practices) has defined its policy with considerable "sharpness, particularity and accuracy". In fact, Congress has gone so far in defining its policy that the Labor Board has very little chance of expanding or contracting the con-

cept of unfair labor practices.

In the second place, Congress has delegated the same powers of the National Labor Relations Board to other administrative bodies in the past. In creating the Interstate Commerce Commission by the adoption of the Interstate Commerce Act of 1889, Congress has followed the practice ever since when creating boards and commissions, and vesting in them different types of governmental powers; the Supreme Court has always approved such delegation of governmental powers providing Congress has taken proper precaution in establishing such administrative machinery.

The objection of unwarranted delegation of governmental powers was urged against the validity of the Federal Trade Commission Act. The similarity between the powers of the Federal Trade Commission and the National Labor Board is so much that a statement issued by the Supreme Court in favor of the Federal Trade Commission will be sufficient to show the attitude of the Court in the delegation by Congress of

governmental powers.

"The constitutionality of the act is assailed, first, as assuming to combine legislative, executive and judicial powers and functions and to confer them upon one and the same body, contrary to Articles I, II, III of the Constitution, and because it assumes to authorize the Commission, which is ostensibly an administrative body, to deprive persons of their property without due process of law, contrary to the fifth amendment to the Constitution."

"This proposition is to our minds without merit. Congress plainly has the power to declare unfair methods of competition unlawful and to require that their practice cease. This Congress has done by the act in question. It with equal clearness has the power to authorize an administrative commission to determine (a) the question of what methods of competition the given trader employes, and (b) provisionally, the mixed question of law and fact, whether such methods are unfair. These questions being determined against the trader, the administrative requirement to cease and desist, prescribed by Congress, follows as a

matter of course, but only provisionally. The Commission's determination of these questions is not final. Not only does the statute give a right of review thereon upon application by the aggrieved trader to a circuit court of appeals of the U. S. but the Commission's order is not enforceable by the Commission but only by order of a court." (28)

We can conclude that if the Labor Board does not go beyond its powers delegated to it by Congress, the Supreme Court will not find the Constitutional validity of the Wagner Act vulnerable in this respect.

No case regarding the constitutionality of the Wagner Act has yet to reach the Supreme Court. Very few cases have gone before the Federal Courts and at present we have only one case in which the Federal Court has decided against the Wagner Act.

The Majestic Flour Mill of Aurora, Montana, brought a case against the National Labor Relations Board before the Federal Court of Kansas City. The dispute between the Labor Board and the Mill arose

when the Regional Labor Board, attempting to iron-out a labor controversy which led to a nine-day shut-down of the Flour Mill and failure by the Mill to re-employ fifty-one workmen, ordered the officials of the Mill to appear at a hearing in Springfield, Montana, to answer to the complaint by the employees.

In its complaint against the Mill, the Union charged that the officials attempted to induce employees to withdraw from the Union, and to form a company union in violation of the Wagner Act. The Mill, the complaint further stated, refused to bargain collectively with its organized workers and preferred to deal with its employees individually.

The Mill officials declared, however, that they did recognize and deal with the unions but were forced to close the plant when wage, hour and personal demands became such that they could no longer operate profitably.

Refusing to abide by the order of the Regional Labor Board, the officials of the Mill asked the Federal Court of Kansas City for a temporary injunction which

was granted for one week; thereafter, seeking to have the Act declared unconstitutional, the Mill's officials asked for a permanent injunction against the National Labor Relations Board on the following allegations: (29)

1. That the company is engaged solely in intra-state commerce and Congress has no right under Section 8, Article 1 of the Constitution to attempt regulation of its business.

2. That the Act purports "to deprive complainants of liberty and property without due process of law contrary to the Fifth Amendment of the Constitution.

3. That it would deprive them of the right of trial in violation of the Seventh Amendment.

4. That the powers sought to be exercised by Congress in enacting the act are powers reserved to the states under the Ninth and Tenth Amendments.

5. That the proceedings of the National Labor Relations Board under provisions of the act, constitute an unwarranted invasion and interference with complainant's right to hire employees, enter into contracts with them and conduct their business of manufacturing.

The case was fought before the federal court of Kansas City with Federal Judge Merrill E. Otis presiding. On December 21, 1935, he ruled that the Wagner Act was unconstitutional. The opinion was the first federal court ruling on the legality of the Wagner Act.

In ruling against the validity of the Act, Judge Otis stressed the Interstate Commerce issue and declared that Congress had exceeded its constitutional right "to regulate commerce with foreign and the several states."

As in the Schecter Case, Judge Otis, in substance, declared that the Flour Mill was doing a business that in no way affected commerce or obstructed the free flow of goods from one state to another either directly or indirectly. The Judge declared: "Congress has no power to regulate that which merely affects commerce. There is no way in which any of the specified unfair labor practices in any business, whether mill or mine or factory or store, conceivably can directly affect commerce" (30) Judge Otis clearly points out in his opinion that the Majestic Flour Mill is a relatively

small establishment engaged exclusively in manufacturing which is an entirely local business. He continues to show that the intent of the entire Wagner Act is to subject the relation of employees and employers in even small intrastate institutions to the control of the National Government. Judge Otis continues: "In so far as the Act impliedly prohibits a refusal by employers in such a flour mill as that at Aurora to bargain collectively with their employees and prohibits individual bargaining, is it constitutional? Unless it is authorized by the commerce clause of the Constitution of the United States, it is not constitutional. That clause is: 'The Congress shall have power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes'. Under the commerce clause, in so far as we are here concerned with it, Congress has power to regulate one thing only. That is: 'commerce among the several states'. Nothing else can be regulated by virtue of this power."

"It is inaccurate to say that under the commerce clause, Congress can regulate that which, not itself a part of commerce among the stages, directly affects

that commerce because it may regulate commerce, it may shield it, it may protect it, from that which would directly affect it by burdening or obstructing it.

"It is only when that outside thing actually impinges or is about to impinge on commerce that it can be reached by the power of Congress. The impingement may be prevented, for that is a regulation of commerce, but what goes on before and outside impingement or the threat of it is beyond the power of Congress."

"Manufacturing is not commerce nor any part of commerce. Nothing more firmly is established in constitutional law than that. Congress, therefore, under the commerce power cannot regulate manufacturing. Hence, it cannot regulate the relations between employers and employees in manufacturing, as commerce. Never can these relations be any part of commerce. The Labor Board states that commerce may be affected by these relations."

"But it is absurd to say that the refusal of the owner of a flour mill to bargain collectively with his employees directly affects commerce among the states."

"If Congress can legislate to prevent that which indirectly and remotely or even directly and immediately might lessen the production of goods intended in whole or in part to be transported in interstate commerce after production, then its power is unlimited."

In concluding his decision, Judge Ctis declared the Wagner Act could only be valid if a constitutional amendment were made giving power to Congress to regulate the type of commerce expressed and implied in the Act. "When such an amendment is enacted, the statute (Wagner Act), if then re-enacted, will certainly be constitutional. But not until then!" (31)

Thus, in its first trial before a federal court, the Wagner Act has failed. The question now seems to be: "Will the Supreme Court follow the same ruling of the federal court and declare the Act unconstitutional, or will the Supreme Court declare that there is in our modern system some social and economic justification for the National Labor Relations Act?"

CHAPTER V

THE EFFECTS OF THE WAGNER ACT

In developing this chapter, I had hoped that the Wagner Act had had specific effects on employers, employees, and labor organizations to regulate them herein. However, either employers *** and organized labor have been reluctant in giving such information, or the Wagner Act has had no effects. The Act has been enacted into law not quite seven months, and the National Labor Relations Board created by the Act has been actually operating only for the last six months, (September 16, 1935)

In view of such facts, the best that this thesis can do is to point out the short-run and the long-run effects that the National Labor Relations Act may have on the various groups concerned.

*** In order to get information regarding the effects of the Wagner Act, I sent out a questionnaire to persons who are leaders in labor circles. They were very carefully selected; they had all expressed their opinion on the Act before the Committee on Education and Labor. Out of one-hundred questionnaires-----fifty to persons who supported the Act and fifty to those who opposed it-----thirty-four answered. However, the results were very interesting; instead of remitting the questionnaire, letters were remitted. In substance, the general thought of those who answered was that it is too premature to decide what effects the Wagner Act has had to date. In the Appendix (appendix DD), the reader will find a copy of the questionnaire, also, names of those to whom a questionnaire was sent, (appendix EE).

First let us review the activities of the National Labor Board. Over a space of less than four months (October, 1935--January, 1936) the Labor Board has handled three-hundred and ninety-five cases. From this total, the Board has only rendered two decisions. At the present time, there are nine cases pending in various courts in which the respondent companies are attempting to restrain the Board from enforcing the provisions of the Wagner Act. We can best explain the effects of the Labor Board on industries statistically: (1)

Period From October, 1935--January, 1936

Total cases handled - - - - - -			395
Total cases heard: - - - - -		29	
Total decisions rendered:- - -		4	
Cease and desist orders issued. - - - -	2		
Orders for election - - -	2		
Total cases heard and available decisions:		25	
Cases awaiting intermediate report - - - -	22		
Intermediate reports have been made - - - -	1		
Decisions being prepared- -	2		
Total cases now being heard - - - -		8	
Total cases closed without formal action			
Settlement by both parties - - -		52	
Charges withdrawn - - - -		73	
Total cases scheduled for hearing- - -		22	
Total cases being investigated - - -		270	

From such statistics, we can see that although the Labor Board is functioning, it is doing so very slowly. It is quite probable that labor disputes will increase which will mean an increase in the number of cases going before the Labor Board. If the cases increase at the same rate that they have during the months cited above and the Board can only issue a relatively small percentage of decisions, the Board will be very inefficient and certainly not doing much toward the intended objectives of the Act.

Of course such inefficiency is explained by the Labor Board officials as a result of the inadequate appropriation to meet the rapidly growing demand for its services, and a personnel staff too small to "even take care of routine correspondence under normal conditions". (2) The Board has an appropriation of about $50,000 per month and has only twenty-one regional agencies throughout the United States. An increase will mean an increased monthly appropriation; without an increase, the Labor Board cannot do justice to its position. Therefore, the question seems to be whether such a tremendous increase in expenditures will be justified

in the light of the Labor Board's accomplishments. The tremendous expenditures of the Board was one argument presented by the Secretary of Labor, Miss Frances Perkins, opposing the independence of the Labor Board. However, it can be stated that truthfully she cared very little for the expenses------ they would be approximately the same even if the Labor Board was made a part of the Department of Labor------but Miss Perkins wanted to have the Labor Board controlled by the Department of Labor.

Undoubtedly, the Act has set up a new bureau or department which will keep on increasing its personnel staff and its expenditures. Of course, the Roosevelt Administration will be at least remembered in history for the inumerable new departmental establishments, and we may suppose that one more or less, such as the Labor Board, makes very little difference to the present generation. The difference will be credited to future generations.

In deciding the Pittsburgh Greyhound Case, the first and most effective decision the Labor Board has yet to render, the Board found that the Company was engaging in three of the five unfair labor practices stated in the Wagner Act. The

labor dispute in this company really had its start in July 26, 1933 when the company, in order to restrain its employees from joining a union, organized a company union. The significant aspects of the company union were:

1/ Membership was automatic; there were no dues, no membership applications or cards.

2/ Only employees of the respondents were eligible to represent the employees.

3/ Management had veto power over any proposed change in the Association.

4/ No provision was made for employee meetings so there was no regular method for the employees to formulate their wishes or to instruct their delegates.

5/ Provision was made whereby the employee representatives got time off for their duties as well as transportation and expenses.

6/ All expenses of the Association were born by the management.

7/ The set up of the plan enabled the management to "pick and choose those matters which it could talk over with its employees."

In other words, the company union was only a farce, wholly managed and supervised by the Greyhound Lines.

When the employees began to doubt the sincerity of the company union, they contacted the American Federation of Labor and a charter was issued by the latter May, 1935. Since then, seven employees who were instrumental in joining the union were discharged.

In answer to the complaint, the respondents contended that the employees of the company were garage men whose duties it was to keep the vehicles in condition and, therefore, could not come under the jurisdiction of the National Labor Relations Board.

However, the Board thought differently, In determining the applicability of the Act, the Board found that the operations conducted at the Pittsburgh garage were an integral part of the interstate bus transportation system operated and managed by the respondent companies. The acts of the respondents occurred in the course and conduct of interstate transportation and affected employees engaged in operations in the course and conduct of interstate transportation and hence, occurred in commerce.

Furthermore, the Board felt that the acts of the respondents in threatening the employees with the loss of their jobs created fear and nervousness which was a threat to the safe and efficient operation of these instrumentalities of interstate commerce. Strikes were threatened which would have burdened interstate commerce.

Therefore, since the Board found that the Wagner Act did apply to the Greyhound Lines, it issued the following orders. They are given here in brief form:

1/ Cease and desist from in any manner interfering with, restraining, or coercing their employees in the exercise of their rights to self-organization, to form, join or assist labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act.

2/ Cease and desist from discouraging membership in the union by discrimination in regard to hire or tenure of employment or any term or condition of employment.

3/ Cease and desist from in any manner dominating or interfering with the administration of the Employees Association of the Pennsylvania Greyhound Lines, Inc., or any other labor organization of their employees.

4/ Offer to reinstate all former employees with pay suffered by reason of their discharge. Recognize future representatives of their employees.

Let us consider what bearing the Wagner Act has on the employers. To the employers who treat their workers in such a manner that the latter are satisfied with their relative status, the effects of the Wagner Act cannot be very far-reaching. In fact Senator Wagner made it quite plain that the Act is not intended for the employers who make it a principle to treat workers fair and reasonably; who realize that labor is not just a commodity that can be treated as if it were wheat or corn in the open market. The Wagner Act can only effect such employers in an educational, evolutionary method.

The Wagner Act is intended, however, to effect drastically those employers who think of labor as any ordinary article on the open market and who

are ready to exploit the laborer to his barest subsistence level. Such employers do not seem to realize that a higher wage level means an increased purchasing power for the worker. But rather think of wages as a part of the total cost of their product which must be decreased when and as much as possible.

In the past it has been a frequent experience of government that when they have attempted to introduce or interfere with existing labor policies, the unintended results of such policies are more important than the intended results.

To be sure, labor organizations have increased their membership enrollment significantly during the last two years--------a gain which is most promising because it has occurred in the midst of a severe depression. The gain, of course, may be a direct effect of the Wagner Act and other recent labor laws; nevertheless, the employers, quite naturally, resist the efforts of the government to replace their labor policies with its own policy. The Wagner bill has had the direct effect of antagonizing employers who, in order to resist

the spread of labor organizations and collective bargaining, are employing all kinds of devices. They discriminate against men and discharge them for union activity. They endeavor to quiet discontent by raising wages. One author (3) firmly believes that the rise in wages since 1934 has partly been due to the union organization movement since that date.

One noteworthy effect of the Wagner Act is that it is the cause for the establishment of many employee-representation committees or company unions. This is interesting in view of the fact that the Wagner Act is intended to eliminate employer-dominated company unions. The plans, "when well operated, are an exceedingly effective arrangement for adjusting grievances (and in preventing them) and for keeping managers informed of what is on the worker's mind. The movement to establish employee-representation plans was really a result of the rapid gains of the trade unions during the war, but it made little progress during the twenties when union membership was stationary or slowly dropping. Indeed, from 1926 until the summer of 1933, the number of

employee-representation plans actually diminished. With the passage of the Recovery Act, there was a rush to organize committees and within several months, the number in existence doubled. Thus, the government's efforts to encourage labor organization have stimulated improvements in personnel administration and, therefore, made the organization of the men under labor auspices in many plants more, instead of less, difficult." (4)

The devices used by employers have undoubtedly been obstacles to the trade union movement, and the law of the Wagner Act may be regarded as reflecting the conviction of many labor leaders that a large part of the American workmen, particularly those in the mass production industries, cannot be organized into independent unions without the help of the government. However, whether it is so or not, one important effect of the Wagner Act to date is that it has stimulated an improvement in the personnel practices and the personnel administration of employers.

The fact that the Act is one-sided and aimed, indirectly at least, against employers, does by its very nature, affect the attitude of employers. Employers insist that the majority rule clause and

the authority of the Labor Relations Board to determine bargaining units deprive employers and minorities of rights guaranteed them by the Fifth Amendment. They argue that the obligation imposed on employers to bargain collectively is arbitrary and unreasonable because no corresponding duty is imposed on the employees. They assert that the Act goes beyond the power of Congress to regulate commerce, despite the restrictions that it places upon the jurisdiction of the Labor Board. Then, too, we must remember that the battle is really between employers and labor organizations. Men who rise to high posts, both in management and labor organization, are often of the domineering type and the difficulties of cooperation, because of individual differences, are substantial. However, "the record of American industry warrants the conclusion that there is at least a reasonable possibility of developing effective cooperation between organized labor and management." (5)

Regardless of whether the Act is constitutional or not, in judging the short-run results of the Act, it is sensible to conclude that conservative em-

ployers will formulate their labor policies on the assumption that the Act is constitutional. On this basis, the immediate effects of the Wagner Act will be very different from those intended. The immediate effect of the Act is bound to stimulate great improvements in personnel administration and the treatment of the workers by the employers. A similar effect was felt when Section 7(a) of the National Industrial Recovery Act was adopted. Whereas the Section just mentioned caused employers to establish hundreds of employee-representation plans, the Wagner Act will lead many employers to improve the operation of them as well as to establish many more.

The ultimate effect of the Wagner Act on employers is different, however. It is safe to assume that, regardless of the validity of this particular law, this and future administrations will throw their influence behind the essential policy represented by the Wagner Act,-----namely, the protection of employees in their right to organize without interference by employers and in their right to bargain collectively through repre-

sentatives of their own choosing.(6) Assuming that we are correct, the ultimate effects of the Wagner Act will be very much to the liking of the trade unions or organized labor. A gradual evolution of employee-representation plans will eventually lead to the strengthening of the powers of labor organizations. It is obvious that when employees attempt to bargain collectively, company unions will change rapidly. Employees will expect expert representatives to meet the employer and they will, of course, look to labor organizations for such help. Hence, "ultimately the policy of the Wagner Act may be expected to produce a growth in union membership, and a spread of collective bargaining".(7) which will directly have the effect of restricting the employers in their labor practices, particularly unfair labor practices.

Another vital effect of the Wagner Act is the fear which the labor policy arouses among employers. Government labor policies have always aroused fear among employers so that, in reality, the Wagner Act has increased the degree of fear among them. It is the fear of employers that the labor movement

will become highly political. Of course, employers are justified in having such fear. The growing dependence of the trade unions on the government will compel the labor movement, which in this country has been primarily an economic movement, to become highly political. Employers fear the rising political power of labor. They point out that under the Wagner Act only employers are capable of committing an unfair labor practice, but it does nothing to assure that the labor organizations are responsible, that they have not been captured by racketeers, or that agreements, if made, can be enforced. At present, the need for close holding of labor unions to honesty and public duty is not sufficiently realized. Hence, it is suggested that the real danger is not that the government will dominate the trade unions but that the trade unions will dominate the government, that the government will be too subservient to organized labor to develop anything approaching a national labor policy, that the government will be used by the trade unions for their own purposes, and that the government's labor policy will in essence be

trade-union policy backed by the sanction of law.(8)

In essence, it is the fear on the part of employers-----and certain labor organizations----- that organized special groups, often called "pressure-groups", will grip the labor movement. No one would eliminate pressure groups entirely in a free society, because it is only by means of such groups that we can assert that society is free; yet, the fear lies in the idea that such pressure groups can so dominate the government that public policy becomes a policy of selected groups rather than a national policy.

I think it is well to duplicate, in part, a letter sent to me by the Caterpillar Tractor Company (9) in answer to my questionnaire. From the letter we can conclude that the Wagner Act will tend to effect mostly those employers who exploit their employees. "In so far as this company is concerned, we have witnessed no effects from the passage of this Act. We have no company union, nor has any attempt been made to organize an employee union. We are pursuing, and will continue to pursue, our former policy, which is based upon

the payment of relatively high wages and upon fair treatment to our men. We hope and believe that as long as such a policy is pursued, no justification will arise and no reason will exist for the application, or attempted application, of this new Federal law to any satisfactorily established employer-employee relationship."

What effects has the Act had, or will have, on employees? Regardless of what the immediate effects and the ultimate effects of the Wagner Act shall be, whether it benefits the employer or labor organization, employees will benefit at any rate from the Act. We have already noticed that employers, in order to avoid the policies of the Act, are generally speaking, increasing wages, improving the treatment of their employees, modifying or completely abandoning objectionable bonus plans and in some cases, even protecting employees against arbitrary lay-off by granting them seniority rights. Although the employers' purposes are to hinder the organized movement, the actual effect of the Act is to raise the general standard of the employees in respect to wages, hours and conditions of work.

Another effect that the Wagner Act has had, and will continue to have, is that it will tend to encourage the organization of workers. Whatever the employers may do to restrain this organization movement will be of no avail. With the government behind them, labor organizations will act as "pressure groups" on the employees who will, eventually at least, either join a labor organization or be forced to quit their jobs because of pressure.

The organization of workers will inevitably tend to make the individual employee less significant. One of the arguments presented by the opposers to the Act is that the individual loses certain constitutional rights under the policy of the Wagner Act, and they point the majority rule of selecting representatives. Nevertheless, the danger, I feel, does not lie in the majority rule; the danger lies in the fact that the organized movement means that leaders are necessary. In other words, the Wagner Act may have the effect of regimenting employees into few groups with leaders at the head of each; the several leaders will battle for supremacy and hence, the results will be detrimental

to employees in general. The danger of such regimentation is ever-present, naturally, but hardly probable it seems.

We cannot deny that the government, labor organizations and employers are fighting for or against collective bargaining. On one side is the government and labor organizations; on the other side is organized and individual employers. Regardless of which side is victorious, adjustments in the labor practices and labor policies of both groups are inevitable. I am wondering whether the period of adjustment will benefit or harm the employees. Just what that period will do to employees is merely guess work; the effects will be felt by employees and the immediate and ultimate results may be either beneficial or detrimental to them. It reminds me of two parties battling for something at the expense of the third party.

Since we all agree, generally speaking, that the objectives of the Wagner Act are desired from the standpoint of all concerned-----whether the Wagner Act can accomplish them entirely is not the question-----we can conclude that the immediate

and ultimate effects of the Wagner Act, in part at least, will be to the benefit of employees in general.

The effects of the Wagner Act on labor organizations have already been implied. In the first place, because employers will do everything to discourage their employees to join labor organizations, the organizations will not make very rapid progress in organizing employees, especially those in the mass production industries. The efforts of the employers, with a certain degree of success, will make the immediate results of the Wagner Act a disappointment to organized labor. In fact, the employers' improvement of their practices will make it more difficult for labor organizations to organize into trade unions.

The ultimate effects of the Wagner Act will be very different and very much to the liking of organized labor. Company unions have concerned themselves primarily with the adjustment of individual grievances. But sooner or later bargaining over wages, hours and working conditions is bound to develop. Bargaining over such issues will result in a pronounced impetus to organized labor.

Employees will demand expert representation to bargain for them which will mean that they will be practically forced to join trade unions; furthermore, officers of company-unions will recommend employees to join trade unions. Thus, while the principal immediate effect of the government's policy will be the unintended one of improving a personnel administration and thereby increasing the obstacles in the path of many trade unions, ultimately the policy may be expected to produce a growth in union membership and a spread of collective bargaining.

However, not all labor leaders are as optimistic over the future of trade unions. One of the consequences of the government's labor policy is to increase the dependence of the trade unions upon the government. The authority of the National Labor Relations Board to settle disputes over the bargaining unit, may give it much influence upon the outcome of the struggle between company and industrial unions and upon the structure of the American labor movement. Obviously, the farther the government goes in compelling employers to deal with labor or-

ganizations, the farther the government will have to extend its supervision over them. Certainly if the government requires employers to bargain with whatever organization a majority of the employees select, it will be forced to insist that the organization meet definite standards of fitness. Furthermore, it is illogical for the government to encourage the making of agreements without standing ready at the request of either side to enforce them. "These possibilities are alarming to some labor leaders, for the American Federation of Labor has traditionally been a stronghold of the 'laissez-faire' philosophy. These leaders fear that the dependence of labor on the government will mean eventually the end of the free trade union, that unions will gradually evolve into quasi-public agencies, subject to government regulation and control, that they will become instruments for carrying out government policies, and that they will lose their effectiveness as defenders of the rights and liberties of the workman. The tendency of labor organizations to lose their freedom and to become creatures of the state is said to be world-wide, and the Wagner Act is regarded as evidence that it is reaching the United States." (10)

Such a far-reaching effect, one which I am sure we will not live to experience, tints the imagination with the idea that the United States is gradually evolving into a communistic form of government.

I would rather stick to the conclusion that the Wagner Act will bring results beneficial to labor organizations and employees, and a better cooperation between organized labor and management.

There are two other important effects that must be considered which will result from the Wagner Act. One is an economic effect while the other one is a psychological effect. The important economic effect of the Wagner Act is that it will tend to make wages more rigid or less flexible. To realize how true the statement is, we must decide how the practice of collective bargaining will effect the stability of industry and the problems of controlling booms and depressions. In order to realize its objectives, the Wagner Act stresses the scheme of collective bargaining. When collective bargaining results in wage agreements, it becomes a method by which the price of labor is kept for the period of the agreement; thus, it is a special form of price-fixing.

Economists are fearful of all kinds of price fixing because they know that prices need to be free to move in order to keep industry adjusted to a constantly changing world. "When prices are not free, the adjustment takes the form of fluctuations in production and employment. The disastrous consequences of too rigid wage rates may be illustrated by their effect upon the violence of business cycles. Booms and depressions may be regarded as fluctuations in the rate of change and growth. New methods, new plants, and new machines are in constant competition with the old. A depression, therefore, may be regarded as a period in which the rate of change and growth is abnormally slow, and a boom as a period in which the rate of change and growth is unusually fast".(11) Consequently, the stabilization of production and employment requires, among other things, that fluctuations be introduced into the cost of change------"that when change occurs too rapidly, the cost of change must be raised and when it occurs too slowly, it must be stimulated by cutting the cost of change. Hence, it is scarcely possible to introduce important fluctuations in the cost of change without introducing fluctuations in wages. In this

respect, collective bargaining is likely to prove useful in causing wages to rise promptly during periods of boom and thus in preventing the rate of growth from becoming so rapid that it cannot be maintained. In periods of depression, however, collective bargaining is likely to keep wages pegged at boom levels and thus intensify and prolong the slum.

"To conclude the effect of collective bargaining, it seems likely that the spread of collective bargaining will increase the rigidity of wages. Since under a capitalistic system, rigid prices are incompatible with stable production, the growing rigidity of wages and many other costs seems destined to produce basic changes in our economic institutions."(12)

The psychological effect of the Wagner Act is obvious and is related to the constitutionality of the Act. A few years ago there would have been no doubt that the Act violated certain principles of the American Constitution. Decisions by the Supreme Court before 1926 seem to uphold the belief that the Act is invalid. However, since the Supreme Court decided in favor of the Railway Labor Act of 1926,

there is the suggestion and possibility that it is ready to uphold the Wagner Act. In dealing with this case, we must remember that the Supreme Court will be charged with tremendous emotion; millions of workers will be on edge to learn whether in this day of gigantic corporations, the Constitution forbids the federal government to protect workers in their right to organize and bargain collectively. With such pressure on the Supreme Court, it may well be induced to adopt a liberal interpretation of the Constitution.

In general, the National Labor Relations Act is not a very bad piece of legislation. It can do very little harm to the employers who treat their employees fair; on the other hand, it will give those employers who exploit their men a chance to raise the standard of their own labor practices as well as helping to raise the standard of employees in general.

From the standpoint of employees, the Act represents a right which they have always needed. It is a fact that workers have very little say regarding wages, hours and conditions of work. If the workers do not accomplish in getting higher

wages, shorter hours and better working conditions, the Wagner Act should at least relieve them of the fear they have of their employers------- a fear that should never exist between employer and employee!

Labor organizations have failed dismally in some of their undertakings and whether or not we can entrust them to accomplish the objectives set forth by the policy of the Wagner Act is probable and yet, questionable. If more labor organizations are what we need to bring about a better employer-employee relationship, however, then let us have more of them!

If we agree that the Wagner Act has and will continue to have favorable effects on all parties concerned, then we can also conclude that such effects will be enjoyed by society in general.

CHAPTER VI

SUMMARY AND CONCLUSION

The preceding chapters have covered the National Labor Relations Act quite thoroughly. In the first chapter, we have shown that the Wagner Act is not the first attempt on the part of the government to interfere with labor relations. On the other hand, the Wagner Act is the third attempt of the government to put into effect the policy of the Wagner Act. The Act is really the result of the weaknesses, flaws, ambiguity and excessive generalities of preceding laws.

In the second chapter, the Wagner Act has been analyzed. Based on the assumptions that employees are denied their rights, that employees have an inequality of bargaining power compared with their employers, and that collective bargaining is the way to shorter hours, higher wages and better conditions of work, the Act is intended, in the first place, to protect the workers in their right of association against the interference of their employers or the latters' agents. In this respect, the Act is properly based but it is unfortunate that it does not

protect employees in their right of association against the interference of their fellow-workers or scrupulous labor organizations. In the second place, the Act is intended to force employers to bargain collectively and to enter into agreements with their employees. The Act has set up a labor tribunal to force employers into what may be termed "compulsory arbitration", and in this respect, it is unfortunate that the government must be guilty of discrimination against employers. The Act is too one-sided; in favor of the employees and labor organizations, and against the employers. The tribunal, the National Labor Relations Board, has been vested with enough power to make its orders effective and its results will reflect on how successful government interference with industrial relations can be.

The third chapter of this thesis presents the arguments in favor of and in opposition to the Wagner Act. Briefly, employees and labor organizations stand solidly in favor of the Act; business or industry stands generally opposed to the Act. Society can enjoy the results of both groups conditionally; if the Wagner Act increases labor disputes, as some believe it will, society will suffer.

the loss; but if the Act succeeds in bringing about a better employee-employer relationship, then society will certainly be benefited.

The major problem now facing the Act is the question of its constitutionality. There are certain legal precedents on which the Act is based. There are many more Supreme Court decisions that make the validity of the Act doubtful. The Act is vulnerable to constitutional attack on several grounds. Employers state that the Act violates the Fifth Amendment of the Constitution. The due-process of law point, the problem of interstate commerce and the unwarranted delegation of powers by Congress in the Labor Board are the important issues involved in the constitutionality of the Act. It is almost certain that the Court will not declare the whole Act unconstitutional but it may limit the application of the law to such an extent as to practically nullify it. The Act has already been declared unconstitutional in a federal court. The question before the Supreme Court is whether the Act violates constitutional rights of persons or whether there is some social and economic justi-

fication for such violations and for the Act itself.

Although the Act is intended to organize employees and increase collective bargaining, the immediate effect is to do just the opposite; employers, opposing the organization of workers and the scheme of collective bargaining, are bending their efforts against the government's labor policy. The efforts of the employers are resulting in a higher standard for the employees in general and are obstacles to the organized labor movement. The ultimate effect of the Act will be to the benefit of labor organizations who will gain gradual ground when employees realize that they are not quite capable of dealing with their employers when wages, hours and conditions of work are at stake.

From a personal point of view, the Act does not appear to be as bad as some employers seem to think it is. It certainly is not a panacea as organized labor would have us believe. While the Act is fallacious in certain respects and subject to criticism, it seems to be, on the whole, a sound piece of legislation. I think of the Act as a "pressure" from the government for employers to treat their workers fairer and more reasonable and to refrain

from labor practices that are detrimental not only to individuals but also to society. I will not admit, as organized labor believes and the Wagner Act assumes, that the majority of employers exploit their workers. There are such employers and always will be but they are in the minority. To the employers who bear a mutual understanding with their employees, the Wagner Act can only foster a closer relationship between both groups. The Act, however, tends to make "chiselers" reverse their labor practices, and in this connection, certainly the Wagner Act cannot be bad?

I have no objections to the philosophy of the Act, to the objectives of the Act, the National Labor Relations Board as set up by the Act, to the majority rule and to the scheme of collective bargaining. The objection lies in the fact that there is a power present to make or force one party, usually the employer, to enter into agreements with another party or organization. In a nation like the United States, very little can be accomplished by force or coercion. Perhaps, the reason lies in the fact that we are such a heterogeneous group.

We tried forcibly to prohibit drinking by the

adoption of the Volstead Act; our efforts to prevent theft have proved just as futile; the results are most disappointing. Perhaps, we owe our failure to the means we use to prohibit some from drinking and prevent others from stealing; certainly we could try more effective means!

The point is that the Wagner Act endeavors to force people, and just how successful it will be is questionable. In this respect, it will depend on the attitudes developed among the various groups concerned. It will be unfortunate if labor rigidly insists upon the full measure of its legal rights under the law. It will be equally unfortunate if employers oppose the application of the Act by legalistic and devious tactics. The workability and success of the Act will depend, it seems, on how both sides are ready to make adjustments to the policy of the Act, and how successful the National Labor Relations Board is in developing a proper point of view toward the statute on the part of both employers and employees.

THE END

A P P E N D I X

CHAPTER REFERENCES

CHAPTER I:--------History of the Wagner Bill:

(1) Hearings before the Committee on Education and Labor. Part I. Page 8.

(2) Ibid: Page 9.

(3) To avoid duplication, see Chapter II, page 22.

(4) Hearings before the Committee on Education and Labor. Part I. Page 11.

(5) Ibid. page 16.

(6) Ibid: page 16.

(7) To avoid duplication, see Chapter II, page 22.

(8) Hearings before the Committee on Education and Labor Part I.
(9) page 11.

(9) Ibid. page 20.

(10) Ibid. page 22.

(11) Ibid. Page 23.

(12) See Section 7(a) of National Industrial Recovery Act in Appendix. (appendix CC)

(13) Hearings before the Committee on Education and Labor. Part I. Page 31.

(14) See reference No. (12) above.

(chapter reference continued)

CHAPTER II:-------The Wagner Bill:

(1) Promise of promoting industrial peace by the recognition of the rights of employees to organize and bargain collectively.

(2) Senate Report. No. 573, Page 1.

(3) Ibid, page 3.

(4) Ibid, page 3.

(5) Ibid, page 2.

(6) The American Labor Legislation Review, December, 1935. page 179.

(7) See Section 7(a) of National Industrial Recovery Act in Appendix. (appendix CC)

(8) At least until the Act is declared unconstitutional.

(9) "The National Labor RelationsAct" by William H. Spencer. Page 3.

(10) Ibid. page 4.

(11) The National Labor Relations Act. (appendix BB) page 1.

(12) "The National Labor Relations Act" by William H. Spencer. Page 4.

(13) Ibid. page 2.

(14) Ibid. page 3.

(15) The National Labor Relations Act. (appendix BB) page 1.

(references of chapter II continued)

(16) For the more detailed definitions, please see Act in the Appendix BB.

(17) We must remember that Section 7(a) of the National Industrial Recovery Act is the foundation of all subsequent proposals on the subject.

(18) "The National Labor Relations Act" by William H. Spencer. Page 7.

(19) The National Labor Relations Act (appendix BB) page 4

(20) "The National Labor Relations Act" by William H. Spencer. pages 7-12.

(21) The National Labor Relations Act (appendix)BB) page 4.

(22) A "yellow dog" agreement is one under which an employee, or a person seeking employment agrees in consideration of employment to join or not to join a labor organization.

(23) See Act in the Appendix. (appendix BB) page.4.

(24) Ibid, page 5.

(25) "The National Labor Relations Act" by William H. Spencer. page 21.

(26) Ibid, page 23.

(27) Ibid, page 23.

(28) Ibid, page 27.

(29) See Act in the Appendix. (appendix BB) page 9.

(30) Senate Report No. 573. page 13.

(references of chapter II continued)

(31) Suggestion by Dr. McPherrin H. Donaldson. Professor at Boston University, College of Business Administration. Thesis advisor.

(32) "The National Labor Relations Act" by William H. Spencer. page 35.

(33) Suggestion by Dr. McPherrin H. Donaldson. Professor at Boston University, College of Business Administration. Thesis advisor.

(34) Ibid, page 37-38.

(35) Ibid, page 40.

(36) See National Industrial Recovery Act in appendix. (appendix CC)

(37) "The National Labor Relations Act" by William H. Spencer. Note on page 41.

'On August 23, 1935, the President constituted the National Labor Relations Board as follows: Joseph Madden, an attorney of Pennsylvania; as chairman: John M. Carmody of New York: Edwin S. Smith of Massachusetts. The President stated: "It is a good, but undistinguished Board".'

(38) Hearings before the Committee on Education and Labor. Part I. pages 50-52. Statement by Senator Wagner. March 12, 1935.

(39) Ibid, pages 57-66. Statement by Francis Biddle, March 13, 1935.

(40) Ibid, pages 73-99. Statement by Hon. Frances Perkins, March 12, 1935.

(41) "The National Labor Relations Act" by William H. Spencer. page 38

(references of chapter II continued)

(42) See Act in appendix. (appendix BB) Section 9(c).

(43) See Act in appendix. (appendix BB) Section 10.

(44) See pages 24-30 of thesis.

(45) "The National Labor Relations ACT" by William H. Spencer. page 43.

(46) See Act in the Appendix. (appendix BB) page 5.

(47) See Act in the Appendix. (appendix BB) page 6.

(48) Ibid, page 8.

(49) Section 9 of the Act deals with the method of employee-representation and the election for such representation. Section 10 treats the procedure that the Board must follow to prevent unfair labor practices by employers.

(50) See Act in the Appendix. (appendix BB) page 9.

(51) Not more than a fine of $5000. and imprisonment of 5 years or both.

(52) "The National Labor Relations Act", by William H. Spencer. page 61.

(chapter references continued)

CHAPTER III-------Hearings on the Wagner Bill Before The Committee on Education and Labor;

(1) Hearings before the Committee on Education and Labor. Part II.
Statement by Dean Lloyd K. Garrison, pages 125-146.
(1a) page 126.
(1b) page 128-130-131-
(1c) page 134.

(2) Ibid, pages 172-182. Part II.
Statement by Professor H. A. Millis.

(3) Ibid, pages 699-704; part III.
Statement by Harold Shapiro.

(4) Ibid. Part II: pages 188-199.
Statement by John L. Lewis.
(4a) page 189.
(4b) page 191.

(5) Ibid, part II: pages 215-217.
Statement by Wood F. Acton.

(6) Ibid, part II: page 221.
Statement by Dr. Sidney E. Goldstein.

(7) New York Times, September 2, 1935.
Article by Mr. John Madden.

(8) New York Times, March 11, 1935.
Article "Company Unions" by Senator Wagner.

(9) Hearings before the Committee on Education and Labor. Part III. page 269-276.
Statement by W. Gibson Carey.
(9a) page 269)
(9b) page 271.
(9c) page 273.

(10) Ibid, Part III. pages 626-632.
Statement by Eugene McAuliffe.
(10a) The ill-success of law prohibiting theft, drinking, etc. seem to sumstantiate Mr. McAuliffe's views.

(reference of chapter III continued)

(11) Hearings before the Committee on Education and Labor. Part III: pages 667-680.
Statement By E. R. Lederer.
(11a) page 671.
(11b) page 673.
(11c) Contradiction pointed out by Dr. Donaldson.

(12) Ibid, Part III; pages 696-699.
Statement by C. A. Higgens

(13) Ibid, Part III; page 767.

(14) Ibid, Part III: page 741.
Statement by Axtell J. Byles.

(15) "The National Labor Relations Act" by William H. Spencer.
Page 1, chapter I.

(16) Ibid, page 1, chapter I.

****

****

CHAPTER IV --------Historical Precedents and Constitutional Issues of the Wagner Act.

(1) 44 Statute, 577; U.S.C., title 45, Section 152.

(2) Hearings before the Committee on Education and Labor; Part I, page 28.

(3) 47 Statute, 70: U.S.C.. title 29. Section 102.

(4) Hearings before the Committee on Education and Labor: Part I. page 28.

(5) 47 Statute, 1481; U.S.C., title II, Section 205.

(6) Hearings before the Committee on Education and Labor: Part I, page 1.

(7) 48 Statute, 214: U.S.C., title 49, section 257.

(8) Hearings before the Committee on Education and Labor: Part I, page 1.

(9) To avoid duplication, see Section 7(a) of National Industrial Recovery Act in appendix CC.

(references of chapter IV continued)

(10) Dr. McPherrin H. Donaldson, thesis advisor.

(11) See page 24 of this thesis for the unfair labor practices in the Act.

(12) Senate Report, No. 573. Page 17.

(13) Texas and New Orleans VS Brotherhood, (281 U.S.. 548) 1930.

(14) Senate Report, No 573; page 17.

(15) "The National Labor Relations Act" by William H. Spencer: page 67.

(16) See page 24 of thesis for unfair labor practices.

(17) "The National Labor Relations Act" by William H. Spencer: page 70.

(18) Ibid, page 72.
(19) Ibid, page 73.
(20) Ibid, page 74.

(21) Senate Report, No. 573.

(22) "The National Labor Relations Act" by William H. Spencer. Page 77.

(23) Dr. McPherrin H. Donaldson, thesis advisor.

(24) "The National Labor Relations Act" by William H. Spencer; page 81.

(25) Ibid, page 84.
(26) Ibid, page 62.
(27) Ibid, page 63.

(28) The National Harness Manufacturers' Ass. VS Federal Trade Commission (268 Federal 705) 1920.

(29) Worcester Evening Post, November 22, 1935.

(30) Worcester Sunday Telegram, Dec. 22, 1935, page 1.

(31) Ibid, page 19.

(chapter references continued)

CHAPTER V ---------The Effects of the Wagner Act:

(1) American Federationist, January, 1936. page 32.

(2) Ibid, page 31.

(3) Professor Sumner H. Slichter, professor at Harvard and a member of the Advisory Committee on Railroad employment to the Federal Coordinator of Transportation.

(4) The Yale Review. Winter, 1936. "Labor and Government" page 270.

(5) Ibid, page 270.

(6) Ibid, page 263.

(7) Ibid, page 267.

(8) Ibid, page 273.

(9) Letter from D. G. Sherwin. Vice-President of the Caterpillar Tractor Co., Peoria. Illinois.

(10) The Yale Review, Winter, 1936. "Labor and Government" page 272-273.

(11) Ibid, page 268.

(12) Ibid, page 269.

BB

A COPY OF

THE NATIONAL LABOR RELATIONS ACT

[PUBLIC—NO. 198—74TH CONGRESS]

[S. 1958]

AN ACT

To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations

Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133 [1] approved June 14, 1935.

NATIONAL LABOR RELATIONS BOARD

Sec. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

Sec. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease

[1] So in original.

to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act

as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5)To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

REPRESENTATIVES AND ELECTIONS

Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertin[1] such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any

[1] So in original.

agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined

therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101–115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

Sec. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

Sec. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

Sec. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, sec. 707 (a)), as amended from time to time, or of section 77 B, paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

Sec. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Sec. 16. This Act may be cited as the "National Labor Relations Act."

Approved, July 5, 1935.

CC

A COPY OF

THE NATIONAL INDUSTRIAL RECOVERY ACT

[PUBLIC—No. 67—73D CONGRESS]

[H.R. 5755]

AN ACT

To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—INDUSTRIAL RECOVERY

DECLARATION OF POLICY

SECTION 1. A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

ADMINISTRATIVE AGENCIES

SEC. 2. (a) To effectuate the policy of this title, the President is hereby authorized to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the provisions of the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed.

(b) The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint, and may establish an industrial planning and research agency to aid in carrying out his functions under this title.

(c) This title shall cease to be in effect and any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

CODES OF FAIR COMPETITION

SEC. 3. (a) Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: *Provided*, That such code or codes shall not permit monopolies or monopolistic practices: *Provided further*, That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

(b) After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act, as amended.

(c) The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of any code of fair competition approved under this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

(d) Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade or industry or subdivision

thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section.

(e) On his own motion, or if any labor organization, or any trade or industrial organization, association, or group, which has complied with the provisions of this title, shall make complaint to the President that any article or articles are being imported into the United States in substantial quantities or increasing ratio to domestic production of any competitive article or articles and on such terms or under such conditions as to render ineffective or seriously to endanger the maintenance of any code or agreement under this title, the President may cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this subsection, and if, after such investigation and such public notice and hearing as he shall specify, the President shall find the existence of such facts, he shall, in order to effectuate the policy of this title, direct that the article or articles concerned shall be permitted entry into the United States only upon such terms and conditions and subject to the payment of such fees and to such limitations in the total quantity which may be imported (in the course of any specified period or periods) as he shall find it necessary to prescribe in order that the entry thereof shall not render or tend to render ineffective any code or agreement made under this title. In order to enforce any limitations imposed on the total quantity of imports, in any specified period or periods, of any article or articles under this subsection, the President may forbid the importation of such article or articles unless the importer shall have first obtained from the Secretary of the Treasury a license pursuant to such regulations as the President may prescribe. Upon information of any action by the President under this subsection the Secretary of the Treasury shall, through the proper officers, permit entry of the article or articles specified only upon such terms and conditions and subject to such fees, to such limitations in the quantity which may be imported, and to such requirements of license, as the President shall have directed. The decision of the President as to facts shall be conclusive. Any condition or limitation of entry under this subsection shall continue in effect until the President shall find and inform the Secretary of the Treasury that the conditions which led to the imposition of such condition or limitation upon entry no longer exists.

(f) When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be fined not more than $500 for each offense, and each day such violation continues shall be deemed a separate offense.

AGREEMENTS AND LICENSES

Sec. 4. (a) The President is authorized to enter into agreements with, and to approve voluntary agreements between and among, persons engaged in a trade or industry, labor organizations, and trade or industrial organizations, associations, or groups, relating to any trade or industry, if in his judgment such agreements will aid in effectuating the policy of this title with respect to transactions in or

affecting interstate or foreign commerce, and will be consistent with the requirements of clause (2) of subsection (a) of section 3 for a code of fair competition.

(b) Whenever the President shall find that destructive wage or price cutting or other activities contrary to the policy of this title are being practiced in any trade or industry or any subdivision thereof, and, after such public notice and hearing as he shall specify, shall find it essential to license business enterprises in order to make effective a code of fair competition or an agreement under this title or otherwise to effectuate the policy of this title, and shall publicly so announce, no person shall, after a date fixed in such announcement, engage in or carry on any business, in or affecting interstate or foreign commerce, specified in such announcement, unless he shall have first obtained a license issued pursuant to such regulations as the President shall prescribe. The President may suspend or revoke any such license, after due notice and opportunity for hearing, for violations of the terms or conditions thereof. Any order of the President suspending or revoking any such license shall be final if in accordance with law. Any person who, without such a license or in violation of any condition thereof, carries on any such business for which a license is so required, shall, upon conviction thereof, be fined not more than $500, or imprisoned not more than six months, or both, and each day such violation continues shall be deemed a separate offense. Notwithstanding the provisions of section 2 (c), this subsection shall cease to be in effect at the expiration of one year after the date of enactment of this Act or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

SEC. 5. While this title is in effect (or in the case of a license, while section 4 (a) is in effect) and for sixty days thereafter, any code, agreement, or license approved, prescribed, or issued and in effect under this title, and any action complying with the provisions thereof taken during such period, shall be exempt from the provisions of the antitrust laws of the United States.

Nothing in this Act, and no regulation thereunder, shall prevent an individual from pursuing the vocation of manual labor and selling or trading the products thereof; nor shall anything in this Act, or regulation thereunder, prevent anyone from marketing or trading the produce of his farm.

LIMITATIONS UPON APPLICATION OF TITLE

SEC. 6. (a) No trade or industrial association or group shall be eligible to receive the benefit of the provisions of this title until it files with the President a statement containing such information relating to the activities of the association or group as the President shall by regulation prescribe.

(b) The President is authorized to prescribe rules and regulations designed to insure that any organization availing itself of the benefits of this title shall be truly representative of the trade or industry or subdivision thereof represented by such organization. Any organization violating any such rule or regulation shall cease to be entitled to the benefits of this title.

(c) Upon the request of the President, the Federal Trade Commission shall make such investigations as may be necessary to enable the President to carry out the provisions of this title, and for such purposes the Commission shall have all the powers vested in it with respect of investigations under the Federal Trade Commission Act, as amended.

Sec. 7. (a) Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment, approved or prescribed by the President.

(b) The President shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which the conditions referred to in clauses (1) and (2) of subsection (a) prevail, to establish by mutual agreement, the standards as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title; and the standards established in such agreements, when approved by the President, shall have the same effect as a code of fair competition, approved by the President under subsection (a) of section 3.

(c) Where no such mutual agreement has been approved by the President he may investigate the labor practices, policies, wages, hours of labor, and conditions of employment in such trade or industry or subdivision thereof; and upon the basis of such investigations, and after such hearings as the President finds advisable, he is authorized to prescribe a limited code of fair competition fixing such maximum hours of labor, minimum rates of pay, and other conditions of employment in the trade or industry or subdivision thereof investigated as he finds to be necessary to effectuate the policy of this title, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of section 3. The President may differentiate according to experience and skill of the employees affected and according to the locality of employment; but no attempt shall be made to introduce any classification according to the nature of the work involved which might tend to set a maximum as well as a minimum wage.

(d) As used in this title, the term "person" includes any individual, partnership, association, trust, or corporation; and the terms "interstate and foreign commerce" and "interstate or foreign commerce" include, except where otherwise indicated, trade or commerce among the several States and with foreign nations, or between the

District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States.

APPLICATION OF AGRICULTURAL ADJUSTMENT ACT

SEC. 8. (a) This title shall not be construed to repeal or modify any of the provisions of title I of the Act entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes", approved May 12, 1933; and such title I of said Act approved May 12, 1933, may for all purposes be hereafter referred to as the "Agricultural Adjustment Act."

(b) The President may, in his discretion, in order to avoid conflicts in the administration of the Agricultural Adjustment Act and this title, delegate any of his functions and powers under this title with respect to trades, industries, or subdivisions thereof which are engaged in the handling of any agricultural commodity or product thereof, or of any competing commodity or product thereof, to the Secretary of Agriculture.

OIL REGULATION

SEC. 9. (a) The President is further authorized to initiate before the Interstate Commerce Commission proceedings necessary to prescribe regulations to control the operations of oil pipe lines and to fix reasonable, compensatory rates for the transportation of petroleum and its products by pipe lines, and the Interstate Commerce Commission shall grant preference to the hearings and determination of such cases.

(b) The President is authorized to institute proceedings to divorce from any holding company any pipe-line company controlled by such holding company which pipe-line company by unfair practices or by exorbitant rates in the transportation of petroleum or its products tends to create a monopoly.

(c) The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both.

RULES AND REGULATIONS

SEC. 10. (a) The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of

this title, and fees for licenses and for filing codes of fair competition and agreements, and any violation of any such rule or regulation shall be punishable by fine of not to exceed $500, or imprisonment for not to exceed six months, or both.

(b) The President may from time to time cancel or modify any order, approval, license, rule, or regulation issued under this title; and each agreement, code of fair competition, or license approved, prescribed, or issued under this title shall contain an express provision to that effect.

TITLE II—PUBLIC WORKS AND CONSTRUCTION PROJECTS

FEDERAL EMERGENCY ADMINISTRATION OF PUBLIC WORKS

SECTION 201. (a) To effectuate the purposes of this title, the President is hereby authorized to create a Federal Emergency Administration of Public Works, all the powers of which shall be exercised by a Federal Emergency Administrator of Public Works (hereafter referred to as the "Administrator"), and to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed. The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint.

(b) The Administrator may, without regard to the civil service laws or the Classification Act of 1923, as amended, appoint and fix the compensation of such experts and such other officers and employees as are necessary to carry out the provisions of this title; and may make such expenditures (including expenditures for personal services and rent at the seat of government and elsewhere, for law books and books of reference, and for paper, printing and binding) as are necessary to carry out the provisions of this title.

(c) All such compensation, expenses, and allowances shall be paid out of funds made available by this Act.

(d) After the expiration of two years after the date of the enactment of this Act, or sooner if the President shall by proclamation or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended, the President shall not make any further loans or grants or enter upon any new construction under this title, and any agencies established hereunder shall cease to exist and any of their remaining functions shall be transferred to such departments of the Government as the President shall designate: *Provided*, That he may issue funds to a borrower under this title prior to January 23, 1939, under the terms of any agreement, or any commitment to bid upon or purchase bonds, entered into with such borrower prior to the date of termination, under this section, of the power of the President to make loans.

SEC. 202. The Administrator, under the direction of the President, shall prepare a comprehensive program of public works, which shall include among other things the following: (a) Construction, repair, and improvement of public highways and park ways, public buildings, and any publicly owned instrumentalities and facilities; (b) conservation and development of natural resources, including control, utilization, and purification of waters, prevention of soil or coastal erosion, development of water power, transmission of electrical energy, and construction of river and harbor improvements and flood control and also the construction of any river or drainage improvement required to perform or satisfy any obligation incurred by the United States through a treaty with a foreign Government heretofore ratified and to restore or develop for the use of any State or its citizens water taken from or denied to them by performance on the part of the United States of treaty obligations heretofore assumed: *Provided*, That no river or harbor improvements shall be carried out unless they shall have heretofore or hereafter been adopted by the Congress or are recommended by the Chief of Engineers of the United States Army; (c) any projects of the character heretofore constructed or carried on either directly by public authority or with public aid to serve the interests of the general public; (d) construction, reconstruction, alteration, or repair under public regulation or control of low-cost housing and slum-clearance projects; (e) any project (other than those included in the foregoing classes) of any character heretofore eligible for loans under subsection (a) of section 201 of the Emergency Relief and Construction Act of 1932, as amended, and paragraph (3) of such subsection (a) shall for such purposes be held to include loans for the construction or completion of hospitals the operation of which is partly financed from public funds, and of reservoirs and pumping plants and for the construction of dry docks; and if in the opinion of the President it seems desirable, the construction of naval vessels within the terms and/or limits established by the London Naval Treaty of 1930 and of aircraft required therefor and construction of heavier-than-air aircraft and technical construction for the Army Air Corps and such Army housing projects as the President may approve, and provision of original equipment for the mechanization or motorization of such Army tactical units as he may designate: *Provided, however*, That in the event of an international agreement for the further limitation of armament, to which the United States is signatory, the President is hereby authorized and empowered to suspend, in whole or in part, any such naval or military construction or mechanization and motorization of Army units: *Provided further*, That this title shall not be applicable to public works under the jurisdiction or control of the Architect of the Capitol or of any commission or committee for which such Architect is the contracting and/or executive officer.

SEC. 203. (a) With a view to increasing employment quickly (while reasonably securing any loans made by the United States) the President is authorized and empowered, through the Administrator or through such other agencies as he may designate or create, (1) to construct, finance, or aid in the construction or financing of any public-works project included in the program prepared pursuant to section

202; (2) upon such terms as the President shall prescribe, to make grants to States, municipalities, or other public bodies for the construction, repair, or improvement of any such project, but no such grant shall be in excess of 30 per centum of the cost of the labor and materials employed upon such project; (3) to acquire by purchase, or by exercise of the power of eminent domain, any real or personal property in connection with the construction of any such project, and to sell any security acquired or any property so constructed or acquired or to lease any such property with or without the privilege of purchase: *Provided*, That all moneys received from any such sale or lease or the repayment of any loan shall be used to retire obligations issued pursuant to section 209 of this Act, in addition to any other moneys required to be used for such purpose; (4) to aid in the financing of such railroad maintenance and equipment as may be approved by the Interstate Commerce Commission as desirable for the improvement of transportation facilities; and (5) to advance, upon request of the Commission having jurisdiction of the project, the unappropriated balance of the sum authorized for carrying out the provisions of the Act entitled "An Act to provide for the construction and equipment of an annex to the Library of Congress", approved June 13, 1930 (46 Stat. 583); such advance to be expended under the direction of such Commission and in accordance with such Act: *Provided*, That in deciding to extend any aid or grant hereunder to any State, county, or municipality the President may consider whether action is in process or in good faith assured therein reasonably designed to bring the ordinary current expenditures thereof within the prudently estimated revenues thereof. The provisions of this section and section 202 shall extend to public works in the several States, Hawaii, Alaska, the District of Columbia, Puerto Rico, the Canal Zone, and the Virgin Islands.

(b) All expenditures for authorized travel by officers and employees, including subsistence, required on account of any Federal public-works projects, shall be charged to the amounts allocated to such projects, notwithstanding any other provisions of law; and there is authorized to be employed such personal services in the District of Columbia and elsewhere as may be required to be engaged upon such work and to be in addition to employees otherwise provided for, the compensation of such additional personal services to be a charge against the funds made available for such construction work.

(c) In the acquisition of any land or site for the purposes of Federal public buildings and in the construction of such buildings provided for in this title, the provisions contained in sections 305 and 306 of the Emergency Relief and Construction Act of 1932, as amended, shall apply.

(d) The President, in his discretion, and under such terms as he may prescribe, may extend any of the benefits of this title to any State, county, or municipality notwithstanding any constitutional or legal restriction or limitation on the right or power of such State, county, or municipality to borrow money or incur indebtedness.

SEC. 204. (a) For the purpose of providing for emergency construction of public highways and related projects, the President is

authorized to make grants to the highway departments of the several States in an amount not less than $400,000,000, to be expended by such departments in accordance with the provisions of the Federal Highway Act, approved November 9, 1921, as amended and supplemented, except as provided in this title, as follows:

(1) For expenditure in emergency construction on the Federal aid highway system and extensions thereof into and through municipalities. The amount apportioned to any State under this paragraph may be used to pay all or any part of the cost of surveys, plans, and of highway and bridge construction including the elimination of hazards to highway traffic, such as the separation of grades at crossing, the reconstruction of existing railroad grade crossing structures, the relocation of highways to eliminate railroad crossings, the widening of narrow bridges and roadways, the building of footpaths, the replacement of unsafe bridges, the construction of routes to avoid congested areas, the construction of facilities to improve accessibility and the free flow of traffic, and the cost of any other construction that will provide safer traffic facilities or definitely eliminate existing hazards to pedestrian or vehicular traffic. No funds made available by this title shall be used for the acquisition of any land, right of way, or easement in connection with any railroad grade elimination project.

(2) For expenditure in emergency construction on secondary or feeder roads to be agreed upon by the State highway departments and the Secretary of Agriculture: *Provided*, That the State or responsible political subdivision shall provide for the proper maintenance of said roads. Such grants shall be available for payment of the full cost of surveys, plans, improvement, and construction of secondary or feeder roads, on which projects shall be submitted by the State highway department and approved by the Secretary of Agriculture.

(b) Any amounts allocated by the President for grants under subsection (a) of this section shall be apportioned among the several States seven-eighths in accordance with the provisions of section 21 of the Federal Highway Act, approved November 9, 1921, as amended and supplemented (which Act is hereby further amended for the purposes of this title to include the District of Columbia), and one-eighth in the ratio which the population of each State bears to the total population of the United States, according to the latest decennial census and shall be available on July 1, 1933, and shall remain available until expended; but no part of the funds apportioned to any State need be matched by the State, and such funds may also be used in lieu of State funds to match unobligated balances of previous apportionments of regular Federal-aid appropriations.

(c) All contracts involving the expenditure of such grants shall contain provisions establishing minimum rates of wages, to be predetermined by the State highway department, which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals for bids for the work.

(d) In the expenditure of such amounts, the limitations in the Federal Highway Act, approved November 9, 1921, as amended and

supplemented, upon highway construction, reconstruction, and bridges within municipalities and upon payments per mile which may be made from Federal funds, shall not apply.

(e) As used in this section the term "State" includes the Territory of Hawaii and the District of Columbia. The term "highway" as defined in the Federal Highway Act approved November 9, 1921, as amended and supplemented, for the purposes of this section, shall be deemed to include such main parkways as may be designated by the State and approved by the Secretary of Agriculture as part of the Federal-aid highway system.

(f) Whenever, in connection with the construction of any highway project under this section or section 202 of this Act, it is necessary to acquire rights of way over or through any property or tracts of land owned and controlled by the Government of the United States, it shall be the duty of the proper official of the Government of the United States having control of such property or tracts of land with the approval of the President and the Attorney General of the United States, and without any expense whatsoever to the United States, to perform any acts and to execute any agreements necessary to grant the rights of way so required, but if at any time the land or the property the subject of the agreement shall cease to be used for the purposes of the highway, the title in and the jurisdiction over the land or property shall automatically revert to the Government of the United States and the agreement shall so provide.

(g) Hereafter in the administration of the Federal Highway Act, and Acts amendatory thereof or supplementary thereto, the first paragraph of section 9 of said Act shall not apply to publicly owned toll bridges or approaches thereto, operated by the highway department of any State, subject, however, to the condition that all tolls received from the operation of any such bridge, less the actual cost of operation and maintenance, shall be applied to the repayment of the cost of its construction or acquisition, and when the cost of its construction or acquisition shall have been repaid in full, such bridge thereafter shall be maintained and operated as a free bridge.

SEC. 205. (a) Not less than $50,000,000 of the amount made available by this Act shall be allotted for (A) national forest highways, (B) national forest roads, trails, bridges, and related projects, (C) national park roads and trails in national parks owned or authorized, (D) roads on Indian reservations, and (E) roads through public lands, to be expended in the same manner as provided in paragraph (2) of section 301 of the Emergency Relief and Construction Act of 1932, in the case of appropriations allocated for such purposes, respectively, in such section 301, to remain available until expended.

(b) The President may also allot funds made available by this Act for the construction, repair, and improvement of public highways in Alaska, the Canal Zone, Puerto Rico, and the Virgin Islands.

SEC. 206. All contracts let for construction projects and all loans and grants pursuant to this title shall contain such provisions as are necessary to insure (1) that no convict labor shall be employed on any such project; (2) that (except in executive, administrative, and supervisory positions), so far as practicable and feasible, no individual directly employed on any such project shall be permitted to work more than thirty hours in any one week; (3) that all em-

ployees shall be paid just and reasonable wages which shall be compensation sufficient to provide, for the hours of labor as limited, a standard of living in decency and comfort; (4) that in the employment of labor in connection with any such project, preference shall be given, where they are qualified, to ex-service men with dependents, and then in the following order: (A) To citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of the political subdivision and/or county in which the work is to be performed, and (B) to citizens of the United States and aliens who have declared their intention of becoming citizens, who are bona fide residents of the State, Territory, or district in which the work is to be performed: *Provided*, That these preferences shall apply only where such labor is available and qualified to perform the work to which the employment relates; and (5) that the maximum of human labor shall be used in lieu of machinery wherever practicable and consistent with sound economy and public advantage.

SEC. 207. (a) For the purpose of expediting the actual construction of public works contemplated by this title and to provide a means of financial assistance to persons under contract with the United States to perform such construction, the President is authorized and empowered, through the Administrator or through such other agencies as he may designate or create, to approve any assignment executed by any such contractor, with the written consent of the surety or sureties upon the penal bond executed in connection with his contract, to any national or State bank, or his claim against the United States, or any part of such claim, under such contract; and any assignment so approved shall be valid for all purposes, notwithstanding the provisions of sections 3737 and 3477 of the Revised Statutes, as amended.

(b) The funds received by a contractor under any advances made in consideration of any such assignment are hereby declared to be trust funds in the hands of such contractor to be first applied to the payment of claims of subcontractors, architects, engineers, surveyors, laborers, and material men in connection with the project, to the payment of premiums on the penal bond or bonds, and premiums accruing during the construction of such project on insurance policies taken in connection therewith. Any contractor and any officer, director, or agent of any such contractor, who applies, or consents to the application of, such funds for any other purpose and fails to pay any claim or premium hereinbefore mentioned, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than $1,000 or by imprisonment for not more than one year, or by both such fine and imprisonment.

(c) Nothing in this section shall be considered as imposing upon the assignee any obligation to see to the proper application of the funds advanced by the assignee in consideration of such assignment.

SUBSISTENCE HOMESTEADS

SEC. 208. To provide for aiding the redistribution of the overbalance of population in industrial centers $25,000,000 is hereby made available to the President, to be used by him through such agencies as he may establish and under such regulations as he may make, for

making loans for and otherwise aiding in the purchase of subsistence homesteads. The moneys collected as repayment of said loans shall constitute a revolving fund to be administered as directed by the President for the purposes of this section.

RULES AND REGULATIONS

SEC. 209. The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and any violation of any such rule or regulation shall be punishable by fine of not to exceed $500 or imprisonment not to exceed six months, or both.

ISSUE OF SECURITIES AND SINKING FUND

SEC. 210. (a) The Secretary of the Treasury is authorized to borrow, from time to time, under the Second Liberty Bond Act, as amended, such amounts as may be necessary to meet the expenditures authorized by this Act, or to refund any obligations previously issued under this section, and to issue therefor bonds, notes, certificates of indebtedness, or Treasury bills of the United States.

(b) For each fiscal year beginning with the fiscal year 1934 there is hereby appropriated, in addition to and as part of, the cumulative sinking fund provided by section 6 of the Victory Liberty Loan Act, as amended, out of any money in the Treasury not otherwise appropriated, for the purpose of such fund, an amount equal to 2½ per centum of the aggregate amount of the expenditures made out of appropriations made or authorized under this Act as determined by the Secretary of the Treasury.

REEMPLOYMENT AND RELIEF TAXES

SEC. 211. (a) Effective as of the day following the date of the enactment of this Act, section 617 (a) of the Revenue Act of 1932 is amended by striking out "1 cent" and inserting in lieu thereof "1½ cents".

(b) Effective as of the day following the date of the enactment of this Act, section 617 (c) (2) of such Act is amended by adding at the end thereof a new sentence to read as follows: "As used in this paragraph the term 'benzol' does not include benzol sold for use otherwise than as a fuel for the propulsion of motor vehicles, motor boats, or airplanes, and otherwise than in the manufacture or production of such fuel."

SEC. 212. Titles IV and V of the Revenue Act of 1932 are amended by striking out "1934" wherever appearing therein and by inserting in lieu thereof "1935". Section 761 of the Revenue Act of 1932 is further amended by striking out "and on July 1, 1933" and inserting in lieu thereof "and on July 1, 1933, and on July 1, 1934,".

SEC. 213. (a) There is hereby imposed upon the receipt of dividends (required to be included in the gross income of the recipient under the provisions of the Revenue Act of 1932) by any person other than a domestic corporation, an excise tax equal to 5 per centum of the amount thereof, such tax to be deducted and withheld from such dividends by the payor corporation. The tax imposed by this section shall not apply to dividends declared before the date of the enactment of this Act.

(b) Every corporation required to deduct and withhold any tax under this section shall, on or before the last day of the month following the payment of the dividend, make return thereof and pay the tax to the collector of the district in which its principal place of business is located, or, if it has no principal place of business in the United States, to the collector at Baltimore, Maryland.

(c) Every such corporation is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payment made in accordance with the provisions of this section.

(d) The provisions of sections 115, 771 to 774, inclusive, and 1111 of the Revenue Act of 1932 shall be applicable with respect to the tax imposed by this section.

(e) The taxes imposed by this section shall not apply to the dividends of any corporation enumerated in section 103 of the Revenue Act of 1932.

SEC. 214. Section 104 of the Revenue Act of 1932 is amended by striking out the words "the surtax" wherever occurring in such section and inserting in lieu thereof "any internal-revenue tax." The heading of such section is amended by striking out "surtaxes" and inserting in lieu thereof "internal-revenue taxes." Section 13(c) of such Act is amended by striking out "surtax" and inserting in lieu thereof "internal-revenue tax."

SEC. 215. (a) For each year ending June 30 there is hereby imposed upon every domestic corporation with respect to carrying on or doing business for any part of such year an excise tax of $1 for each $1,000 of the adjusted declared value of its capital stock.

(b) For each year ending June 30 there is hereby imposed upon every foreign corporation with respect to carrying on or doing business in the United States for any part of such year an excise tax equivalent to $1 for each $1,000 of the adjusted declared value of capital employed in the transaction of its business in the United States.

(c) The taxes imposed by this section shall not apply—

(1) to any corporation enumerated in section 103 of the Revenue Act of 1932;

(2) to any insurance company subject to the tax imposed by section 201 or 204 of such Act;

(3) to any domestic corporation in respect of the year ending June 30, 1933, if it did not carry on or do business during a part of the period from the date of the enactment of this Act to June 30, 1933, both dates inclusive; or

(4) to any foreign corporation in respect of the year ending June 30, 1933, if it did not carry on or do business in the United States during a part of the period from the date of the enactment of this Act to June 30, 1933, both dates inclusive.

(d) Every corporation liable for tax under this section shall make a return under oath within one month after the close of the year with respect to which such tax is imposed to the collector for the district in which is located its principal place of business or, if it has no principal place of business in the United States, then to the collector at Baltimore, Maryland. Such return shall contain such information and be made in such manner as the Commissioner with

the approval of the Secretary may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector before the expiration of the period for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum a month from the time when the tax became due until paid. All provisions of law (including penalties) applicable in respect of the taxes imposed by section 600 of the Revenue Act of 1926 shall, in so far as not inconsistent with this section, be applicable in respect of the taxes imposed by this section. The Commissioner may extend the time for making the returns and paying the taxes imposed by this section, under such rules and regulations as he may prescribe with the approval of the Secretary, but no such extension shall be for more than sixty days.

(e) Returns required to be filed for the purpose of the tax imposed by this section shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns made under title II of the Revenue Act of 1926.

(f) For the first year ending June 30 in respect of which a tax is imposed by this section upon any corporation, the adjusted declared value shall be the value, as declared by the corporation in its first return under this section (which declaration of value cannot be amended), as of the close of its last income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section (or as of the date of organization in the case of a corporation having no income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section). For any subsequent year ending June 30, the adjusted declared value in the case of a domestic corporation shall be the original declared value plus (1) the cash and fair market value of property paid in for stock or shares, (2) paid-in surplus and contributions to capital, and (3) earnings and profits, and minus (A) the value of property distributed in liquidation to shareholders, (B) distributions of earnings and profits, and (C) deficits, whether operating or nonoperating; each adjustment being made for the period from the date as of which the original declared value was declared to the close of its last income-tax taxable year ending at or prior to the close of the year for which the tax is imposed by this section. For any subsequent year ending June 30, the adjusted declared value in the case of a foreign corporation shall be the original declared value adjusted, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, to reflect increases or decreases (for the period specified in the preceding sentence) in the capital employed in the transaction of its business in the United States.

(g) The terms used in this section shall have the same meaning as when used in the Revenue Act of 1932.

Sec. 216. (a) There is hereby imposed upon the net income of every corporation, for each income-tax taxable year ending after the close of the first year in respect of which it is taxable under section 215, an excess-profits tax equivalent to 5 per centum of such portion of its net income for such income-tax taxable year as is in excess of 12½ per centum of the adjusted declared value of its capital stock (or in the case of a foreign corporation the adjusted

declared value of capital employed in the transaction of its business in the United States) as of the close of the preceding income-tax taxable year (or as of the date of organization if it had no preceding income-tax taxable year) determined as provided in section 215. The terms used in this section shall have the same meaning as when used in the Revenue Act of 1932.

(b) The tax imposed by this section shall be assessed, collected, and paid in the same manner, and shall be subject to the same provisions of law (including penalties), as the taxes imposed by title I of the Revenue Act of 1932.

SEC. 217. (a) The President shall proclaim the date of—

(1) the close of the first fiscal year ending June 30 of any year after the year 1933, during which the total receipts of the United States (excluding public-debt receipts) exceed its total expenditures (excluding public-debt expenditures other than those chargeable against such receipts), or

(2) the repeal of the eighteenth amendment to the Constitution,

whichever is the earlier.

(b) Effective as of the 1st day of the calendar year following the date so proclaimed section 617(a) of the Revenue Act of 1932, as amended, is amended by striking out "1½ cents" and inserting in lieu thereof "1 cent".

(c) The tax on dividends imposed by section 213 shall not apply to any dividends declared on or after the 1st day of the calendar year following the date so proclaimed.

(d) The capital-stock tax imposed by section 215 shall not apply to any taxpayer in respect of any year beginning on or after the 1st day of July following the date so proclaimed.

(e) The excess-profits tax imposed by section 216 shall not apply to any taxpayer in respect of any taxable year after its taxable year during which the date so proclaimed occurs.

SEC. 218. (a) Effective as of January 1, 1933, sections 117, 23(i), 169, 187, and 205 of the Revenue Act of 1932 are repealed.

(b) Effective as of January 1, 1933, section 23(r)(2) of the Revenue Act of 1932 is repealed.

(c) Effective as of January 1, 1933, section 23(r)(3) of the Revenue Act of 1932 is amended by striking out all after the word "Territory" and inserting a period.

(d) Effective as of January 1, 1933, section 182(a) of the Revenue Act of 1932 is amended by inserting at the end thereof a new sentence as follows: "No part of any loss disallowed to a partnership as a deduction by section 23(r) shall be allowed as a deduction to a member of such partnership in computing net income."

(e) Effective as of January 1, 1933, section 141(c) of the Revenue Act of 1932 is amended by striking out "except that for the taxable years 1932 and 1933 there shall be added to the rate of tax prescribed by sections 13(a), 201(b), and 204(a), a rate of three fourths of 1 per centum" and inserting in lieu thereof the following: "except that for the taxable years 1932 and 1933 there shall be added to the rate of tax prescribed by sections 13(a), 201(b), and 204(a), a rate of three fourths of 1 per centum and except that for the taxable years 1934 and 1935 there shall be added to the rate of tax prescribed by sections 13(a), 201(b), and 204(a), a rate of 1 per centum".

(f) No interest shall be assessed or collected for any period prior to September 15, 1933, upon such portion of any amount determined as a deficiency in income taxes as is attributable solely to the amendments made to the Revenue Act of 1932 by this section.

(g) In cases where the effect of this section is to require for a taxable year ending prior to June 30, 1933, the making of an income-tax return not otherwise required by law, the time for making the return and paying the tax shall be the same as if the return was for a fiscal year ending June 30, 1933.

(h) Section 55 of the Revenue Act of 1932 is amended by inserting before the period at the end thereof a semicolon and the following: "and all returns made under this Act after the date of enactment of the National Industrial Recovery Act shall constitute public records and shall be open to public examination and inspection to such extent as shall be authorized in rules and regulations promulgated by the President".

Sec. 219. Section 500 (a) (1) of the Revenue Act of 1926, as amended, is amended by striking out the period at the end of the second sentence thereof and inserting in lieu thereof a comma and the following: "except that no tax shall be imposed in the case of persons admitted free to any spoken play (not a mechanical reproduction), whether or not set to music or with musical parts or accompaniments, which is a consecutive narrative interpreted by a single set of characters, all necessary to the development of the plot, in two or more acts, the performance consuming more than 1 hour and 45 minutes of time."

APPROPRIATION

Sec. 220. For the purposes of this Act, there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $3,300,000,000. The President is authorized to allocate so much of said sum, not in excess of $100,000,000, as he may determine to be necessary for expenditures in carrying out the Agricultural Adjustment Act and the purposes, powers, and functions heretofore and hereafter conferred upon the Farm Credit Administration.

Sec. 221. Section 7 of the Agricultural Adjustment Act, approved May 12, 1933, is amended by striking out all of its present terms and provisions and substituting therefor the following:

"Sec. 7. The Secretary shall sell the cotton held by him at his discretion, but subject to the foregoing provisions: *Provided*, That he shall dispose of all cotton held by him by March 1, 1936: *Provided further*, That notwithstanding the provisions of section 6, the Secretary shall have authority to enter into option contracts with producers of cotton to sell to the producers such cotton held by him, in such amounts and at such prices and upon such terms and conditions as the Secretary may deem advisable, in combination with rental or benefit payments provided for in part 2 of this title.

"Notwithstanding any provisions of existing law, the Secretary of Agriculture may in the administration of the Agricultural Adjustment Act make public such information as he deems necessary in order to effectuate the purposes of such Act."

TITLE III—AMENDMENTS TO EMERGENCY RELIEF AND CONSTRUCTION ACT AND MISCELLANEOUS PROVISIONS

SECTION 301. After the expiration of ten days after the date upon which the Administrator has qualified and taken office, (1) no application shall be approved by the Reconstruction Finance Corporation under the provisions of subsection (a) of section 201 of the Emergency Relief and Construction Act of 1932, as amended, and (2) the Administrator shall have access to all applications, files, and records of the Reconstruction Finance Corporation relating to loans and contracts and the administration of funds under such subsection: *Provided*, That the Reconstruction Finance Corporation may issue funds to a borrower under such subsection (a) prior to January 23, 1939, under the terms of any agreement or any commitment to bid upon or purchase bonds entered into with such borrower pursuant to an application approved prior to the date of termination, under this section, of the power of the Reconstruction Finance Corporation to approve applications.

DECREASE OF BORROWING POWER OF RECONSTRUCTION FINANCE CORPORATION

SEC. 302. The amount of notes, debentures, bonds, or other such obligations which the Reconstruction Finance Corporation is authorized and empowered under section 9 of the Reconstruction Finance Corporation Act, as amended, to have outstanding at any one time is decreased by $400,000,000.

SEPARABILITY CLAUSE

SEC. 303. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SHORT TITLE

SEC. 304. This Act may be cited as the "National Industrial Recovery Act."

Approved, June 16, 1933, 11:55 a.m.

O

Q U E S T I O N N A I R E

THE NATIONAL LABOR RELATIONS ACT

***

3. How has the Act affected, or is affecting, employers in your opinion? Is it beneficial or detrimental?

4. How has the Act affected, or is affecting, employees in your opinion? Is it beneficial or detrimental?

5. Has the Act strengthened or weakened Labor Organizations? What, in your opinion, will be the future of Labor Organizations?

6. What effects has the Act had on your organization?

7. Have the attitudes of the employees and employers changed any since the Act was enacted? In what manner?

8. Are the purposes of the Act (develop collective bargaining, diminish the causes of labor disputes, etc.) being accomplished?

9. Are you at present in favor of or opposed to the Act?

10. What, in your opinion, are some of the weaknesses of the Wagner Act that will tend to make it a failure or will tend to break down its objectives?

11. Have you any objections to the use of your name to acknowledge data in questionnaire?

12. Further Comments.

Questionnaire was sent to the following persons:

Persons who opposed the Act:

Robert T. Caldwell,
American Rolling Mill Co.
Butler Plant,
Butler, Pa.

W. Gibson Carey
Yale and Towne Manufacturing Co.
New York, N. Y.

George B. Chandler
Ohio Chamber of Commerce
Columbus, Ohio

F. C. Jones
National Electrical Manufacturers Ass.
New York, N. Y.

Walter G. Merritt
League for Industrial Rights
New York, N. Y.

Howard W. Dunbar
The Norton Co.
Worcester, Mass.

John Collins
840 Grand Concourse
New York, N. Y.

James Moore
The Republic Steel Corporation
Cleveland, Ohio.

Harvey J. Kelly
The American Newspaper Publishers Ass.
New York, N. Y.

James D. Cunningham
Republic Flow Meters Co.
Chicago, Illinois.

Donald. G. Sherwin
Caterpillar Tractor Co.
Peoria, Illinois

Charles Davis
Etna Plant of Spang Chalfant & Co.
Etna, Pa.

Robert F. Colley
American Rolling Mill Co.
Butler Plant
Butler, Pa.

(Persons who opposed the act continued)

James L. Donnelly
Illinois Manufacturers' Association
Chicago, Illinois

William Dunne
Communist Party Headquarters
New York, N. Y.

Harvey G. Ellard
The Institute of American Meat Packers
Chicago, Illinois

James A. Emery
National Association of Manufacturers
New York, N. Y.

Abraham G. Feldman
The Storkline Furniture Corporation
Chicago, Illinois

Jack Larkin
Weirton Stee Co.
Weirton, West Virginia

R. C. Allen
Lake Superior Iron Ore Ass.
Cleveland.Ohio

Guy E. Mitchell
Steubenville Works of the The Wheeling Steel Corp.
Steubenville, Ohio

William B. Hadden
The Vandergrift Works of the American Sheet &
Tin Plate Co.
Vandergrift, Pa.

T. V. Conway
American Telephone & Telegraph Co.
Toledo, Ohio

Harold H. Whitehead
The Carter Oil Co.
Seminole, Oklahoma

Mark Murphy
Republic Steel Corporation
Youngstown, Ohio

W. N. Watson
Manufacturing Chemists' Association
Washington, D. C.

(persons who opposed the continued)

Robert I. Pierce
Manufacturing Industries in Chicago Heights
Chicago, Illinois

George W. Elliott
Chamber of Commerce
Philadelphia, Pa.

Earl W. Jenkins
Carnegie Steel Co.
Youngstown, Ohio.

William Baum
Employees' Mutual Benefit Association of
Real Silk Hosiery Mills.
Indianapolis, Indiana

Guy L. Harrington
Greenwich, N. Y.

C. A. Higgens
Hercules Powder Co.
Wilmington, Delaware

Robert L. Hart
The B. F. Goodrich Co.
Akron, Ohio

Eugene McAuliffe
American Mining Congress
Omaha, Nebraska

P. W. Litchfield
The Goodyear Tire and Rubber Co.
Arkon, Ohio

George B. Chandler
Ohio Chamber of Commerce
Columbus, Ohio

Robert W. Muir
Jewel Tea Co., Inc.
Barrington, Illinois

E. B. Lederer
Texas & Pacific Coal & Oil Co.
Fort Worth, Texas.

Wendell E. Whipp
Monarch Machine Tool Co.
Sydney, Ohio.

(persons who opposed the act continued)

Raoul F. Desvernine
15 Broad St.
New York, N. Y.

Louis E. Haht
Acme Steel Co.
Chicago, Illinois

Robert C. Graham
The Graham-Paige Motors Corp.
Detroit, Michigan

Mr. E. J. Poole
Carpenter Steel Co.
Reading, Pa

Arno P. Mowitz
The Full Fashioned Hosiery Ass.
Philadelphia, Pa.

E. T. Stannard
Kennecott Copper Corp.
120 Broadway, New York City

Paul Frank
Louisvill Gas & Electric Co.
Louisvill, Kentucky

Albert L. Scott
National Ass. of Finishers of Textile Fabrics
New York, N. Y.

Millard D. Brown
Philadelphia Textile Manufacturers' Association
Philadelphia, Pa.

W. C. Sutherland
Pittsburgh Steel Co.
Reading.Pa.

Albert Crew
The Bethlehem Steel Co, Maryland Plant
Sparrows Point, Maryland.

Persons who favored the Wagner bill:

William H. Davis
The Twentieth Century Fund, Inc.
New York, N. Y.

Robert M. Buck
The American Newspaper Guild, Region 13
Washington, D.C.

James J. Bambrick
1450 Broadway, Room 1700
New York, N. Y.

Thomas Breslan
Beaver Lodge of the Amalgamated Ass. of
Iron, Steel and Tin Workers, Lodge No. 200
Aliquippa, Pennsylvania

A. Steve Nance
The Georgia Federation of Labor
Atlanta, Georgia

Harold R. Shapiro
74 Trinity Place
New York, N. Y.

James Myers
Federal Council of the Churches of Christ
in America
New York, N. Y.

Wood F. Axton
Axton-Fisher Tobacco Co.
Louisville, Kentucky

J. A. Farquharson
Grand Central Post Office
New York, N. Y.

John Frey
Metal Trades Department of American Federtion
of Labor.
New York, N. Y.

Professor H. A. Millis
University of Chicago
Chicago, Ilinois

Dean Lloyd K. Garrison
University of Wisconsis
Wisconsin.

Milton Handler
Columbia University
New York, N. Y.

(persons who favored bill continued)

Edwin S. Smith
Department of Labor
Washington, D. C.

John A. Ryan
National Catholic Welfare Conference
Washington, D.C.

Jeremiah T. Mahoney
Phillips, Mahoney, Leibell & Fielding
New York, N. Y.

Dr. Sidney E. Goldstein
Social Justice Commission of Central
Conference of American Rabbis
New York, N. Y.

Edward E. S. Kephart
Allied Amalgamated Association of Iron,
Steel, and Tin Workers
Pittsburgh, Pa.

James M. Myles
Operative Plasterers' and Cement Finishers'
International Association
Washington, D. C.

Charlton Ogburn
The American Federation of Labor
New York, N. Y.

H. M. Robertson
Brown & Williamson Tobacco Corporation
Louisville, Kentucky

William Cooke
Workers' Council General Electric Co.
Schenectady, N. Y.

Edwin J. Heldk
Axton-Fisher Tobacco Co.
Louisville, Kentucky

Morris L. Cook
Philadelphia
Pennsylvania

M. B. Donham
Harvard University, Graduate School of
Business Administration
Cambridge, Mass.

Clyde Kyle
449 Buchanan Street
Gary, Indiana

(persons who favored the billcontinued)

Francis Biddle
Department of Labor
Washington, D. C.

John D. House
The Goodyear Co.
Arkon, Ohio

William M. Leiserson
National Mediation Board
Washington, D.C.

Erwin Funk
Rogers
Arkansas

Clifford W. Cartwright
Wewoka
Oklahoma

Anthony Riccitelli
Beaver Lodge of the Amalgamated Ass.
Iron, Steel and Tin Workers, Lodge No. 200
Aliquippa , Pa.

Majestic Flour Mills
Aurora
Montana

William Cash
Willard Hotel
Washington, D. C.

Mr. L. B. Palmer
American Newspaper Publishers Ass.
370 Lexington Avenue
New York, N. Y.

G. O. Bailey
American Telephone & Telegraph Co.
New York

Roy A. MacGregor
Constructors Ass. of Western Pennsylvania
Pittsburgh, Pa.

George W. Young
Chamber of Commerce
Chicago, Illinois

Oliver J. Bowen
Standard Oil Co. of Louisiana
New Orleans, La.

(persons who favored the bill continued)

D. Lane Powers
John A. Roebling's Sons Co.
Trenton, N. J.

Fred Hirschhorn
General Cigar Co., Inc.
New York, N. Y.

Edwin C. Smith
Rhode Island Warp Stop Equipment Co.
Pawtucket, R. I.

Sam J. Levy
Levy & Dretchko
Minneapolis, Minn.

Millard D. Brown
Philadelphia Textile Corporation
Philadelphia, Pa.

Clarence O. Skinner
Automotive Parts & Equipment Manufacturers, Inc.
Detroit, Michigan

P. R. Mallory Co.
National Silk Hosiery Mills, Inc.
Brooklyn, N. Y.

Charles Wesley Dunn
Associated Grocery Manufacturers of America, Inc.
New York, N. Y.

James F. McCarthy
Hecla Mining Co.
Wallace, Idaho

J. F. Woodbury
New Mexico Mining Corporation
Silver City, New Mexico

Francis P. Fenton
American Federation of Labor (branch)
Hartford, Conn.

GENERAL SOURCES OF INFORMATION

Groat, George R.
"An Introduction To the Study of Organized Labor In America" MacMillan-Co.. 1916.

Dougherty, Carroll R.
"Labor Problems In American Industry"
Houghton-Mifflin Co.; 1933.

Madden, James
"The New Labor Relations Board"
The American Labor Legislation, December, 1935.

National Labor Relations Board:
Hearings before the Committee on Education and Labor: United States Senate, 74th Congress.
Part I; II: III.
Published by the United States Government Printing Office, Washington, D.C., 1935.

Spencer, William H.
"The National Labor Relations Act"
The Journal of Business of the University of Chicago: The University of Chicago Press, Chicago, Illinois; October, 1935.

United States Bureau of Labor Statistics, 1933
"Labor Through the Century----1833-1933.

Watkins, Gordon S.
"Labor Problems"
Crowell Publishing Co., 1921.

Yoeder, Duke
"Labor Economics and Labor Problems"

National Labor Relations Act
Available from the Department of Labor
Washington, D.C.

Senate Report, No.573 (Report on the Wagner Act)
Available from the Department of Labor
Washington, D.C.

National Industrial Recovery Act.
Available from the Department of Labor
Washington, D.C.

(Bibliography continued)

The following, all dating back to February, 1935, have excellent articles concerning the Wagner Act:

American Federationists.

Atlantic.

The Boston Post.

The Forum.

Labor (newspaper)
Published at Washington, D. C.

Monthly Labor Review.

New York Times.

Personnel Journal.
Volume 14. No. 6; December, 1935

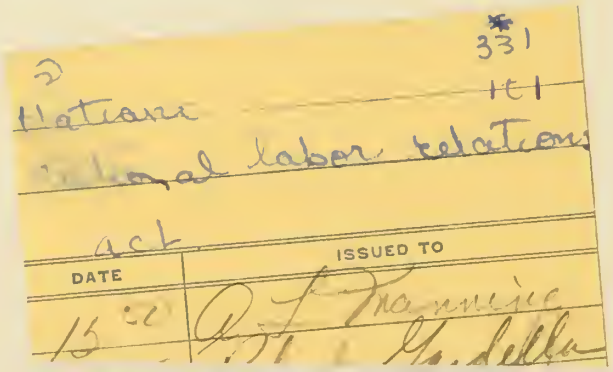
The United States News.

The Worcester Evening Post.

The Worcester Sunday Telegram.

The Yale Review, Winter, 1936

T331
I t 1



11:30

BOSTON UNIVERSITY
1 1719 02548 6236